

TRANSIT ASSISTANCE ACT OF 1982

HEARINGS
BEFORE THE
SUBCOMMITTEE ON
HOUSING AND URBAN AFFAIRS
OF THE
COMMITTEE ON
BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE
NINETY-SEVENTH CONGRESS
SECOND SESSION
ON
S. 2367
TRANSIT ASSISTANCE ACT OF 1982
S. 2377
MASS TRANSPORTATION ACT OF 1982

APRIL 26 AND 28, 1982

Printed for the use of the Committee on Banking, Housing, and Urban Affairs

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TRANSIT ASSISTANCE ACT OF 1982

MONDAY, APRIL 26, 1982

U.S. SENATE,
SUBCOMMITTEE ON HOUSING AND URBAN AFFAIRS,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, D.C.

The subcommittee met at 3 p.m. in room 5302, of the Dirksen Senate Office Building; Senator Richard G. Lugar (chairman of the subcommittee) presiding.

Present: Senators Lugar, Garn, Tower, Heinz, Armstrong, D'Amato, Brady, Riegle, Proxmire, Cranston, Sarbanes, Dodd, and Dixon.

Senator LUGAR. This hearing of the Subcommittee on Housing and Urban Affairs of the Banking Committee is now called to order.

Our hearing today will be on S. 2367, the Transit Assistance Act of 1982, and S. 2377, the Mass Transportation Act of 1982.

We are honored to have as our first witness today the Secretary of the Department of Transportation, Drew Lewis. He's accompanied by an equally distinguished witness, Arthur Teele, Jr., Administrator of Urban Mass Transportation Administration of the Department of Transportation.

Gentlemen, we appreciate your coming. Would you proceed with your testimony?

STATEMENTS OF DREW LEWIS, SECRETARY, DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY ARTHUR E. TEELE, JR., ADMINISTRATOR, URBAN MASS TRANSPORTATION ADMINISTRATION; AND JOHN FOWLER, GENERAL COUNSEL OF THE DEPARTMENT OF TRANSPORTATION

Secretary LEWIS. Also with us is John Fowler, General Counsel of the Department of Transportation. We have a written statement which with your permission we would like to make that part of the record.

Senator LUGAR. Without objection, it will be made part of the record in full.

[Statement follows as though read:]

Mr. LEWIS. Mr. Chairman, members of the committee, I am pleased to appear before you today to discuss the administration's legislative proposal for mass transit. Accompanying me today is Arthur Teele, the Urban Mass Transportation Administrator.

Our proposal represents the administration's efforts to accomplish several important objectives aimed at reorienting the structure and the emphasis of the Federal mass transit program. Promi-

nent among these objectives is the definition of a Federal role in the funding of mass transit systems which will promote both responsible management and efficient operations.

Federal transit assistance must be structured on the basis of the economic realities of the day. Given economic circumstances which require reduced overall spending for transportation activities, funding must be directed to areas where Federal assistance can be most effective. As a consequence, we propose that Federal support be concentrated on capital projects and that there be a corresponding phaseout of operating subsidies. It is the administration's firm belief that the operating costs of a transit system involve issues which are more appropriately resolved at the local, not the Federal, level. In order to spur more cost-effective local decisionmaking, the proposed grant programs rely on easily administered formulas for delivering most Federal capital transit assistance. This approach affords recipients the opportunity to develop plans and programs with the assurance of a stable and predictable source of capital funding. Finally, we have sought to streamline application procedures and to reduce Federal requirements.

SECTION 9—CAPITAL FORMULA PROGRAM FOR URBANIZED AREAS

A key component of the proposed legislation is the capital formula program set out in a new section 9, which builds on a proposal that was developed by the majority staff of this committee last summer. Section 9 signals a significant shift in the basic character of Federal capital programs, and is in marked contrast to the extensive Federal involvement and lengthy paperwork which characterized these programs in the past. At present, UMTA approves specific projects, such as the acquisition of 50 buses or the construction of a maintenance facility. The result is a very hands on Federal role, with UMTA reviewing each grant application, approving third-party contracts, ruling on the responsibility of bidders, and responding to bid protests. Under our proposed capital formula program, a recipient would develop one application which may cover a range of capital activities and would then receive one annual grant.

The administration proposes that 90 percent of the total amount authorized for capital assistance, or \$7.4 billion for fiscal years 1983 through 1986, be used for grants under section 9. In order to maximize the extent of the Federal capital assistance program, the Federal share will equal 75 percent of the cost of projects funded through section 9 grants. The projects for which a recipient would be able to use capital formula funds include both capital and planning activities, as well as the acquisition of major spare parts. New rail starts would not be an eligible capital activity, but rail construction covered by an existing full funding contract or letter of intent would continue to be funded.

Section 9 funds will be distributed on the basis of a revenue matching formula that will apportion funds to each urbanized area based on its share of the total national non-Federal mass transportation revenue. The formula represents a significant innovation in the distribution of Federal resources because, in contrast to population-based allocations, the amount each area would receive closely

parallels actual transit activity. Section 9 funds would be distributed to designated recipients in urbanized areas with populations over 200,000, and to the Governor in smaller urbanized areas.

A fresh approach has also been taken in devising the Federal requirements which will serve as preconditions to the receipt of section 9 funds. Our proposal would permit recipients to certify that they have complied or will comply with particular requirements. Reliance on self-certification will result in a greatly simplified grant process for applicants. For example, recipients would certify that they are in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, the National Flood Insurance Act of 1968, and the National Environmental Policy Act of 1969. UMTA would retain responsibility for enforcing title VI of the Civil Rights Act of 1964, and the private enterprise participation provision of the UMT Act. Each applicant will also prepare a statement of activities and objectives representing projects selected from the transportation improvement program which describes the range of activities the recipient proposes to undertake.

The labor protection provisions of section 13(c) of the act would not apply to the new capital formula program. The capital formula program was structured to reduce Federal intrusions on local decisionmaking, and we believe elimination of the 13(c) requirement is a logical step in that direction. At the same time, section 13(c) would continue to apply to other programs under the act.

SECTION 3—DISCRETIONARY GRANT PROGRAM

Several changes are also proposed with regard to the discretionary capital grant program. The proposed legislation would make \$826 million available for capital assistance under this program in fiscal years 1983 through 1986, an amount representing approximately 10 percent of the overall capital assistance funding. Our emphasis on the capital formula program results in a narrowing of the range of projects and the amount of funds available under section 3. The discretionary program is intended to be a means of servicing special capital needs which cannot be met through an annual formula. In order to alleviate the demand on diminished Federal resources as well as to encourage careful deliberation at the local level before discretionary funds are requested, the Federal share of section 3 capital projects would be lowered to 50 percent.

SECTIONS 18 AND 21—ASSISTANCE FOR NONURBANIZED AREAS

With regard to the grant programs for nonurbanized areas, the administration's legislative proposal includes authorizations totaling \$300 million for grants under section 18 and a new section 21 for fiscal years 1983-86. Section 18, which provides operating and capital assistance, will be phased out and replaced by section 21, which provides capital assistance.

Section 21 is intended as a reaffirmation of our commitment to transit activities in rural areas and parallels, in its provisions, those of section 9. Grants under section 21 will be made pursuant to a formula based on population. Eligible expenses for section 21 funds include planning activities and the replacement of spare

parts, as well as the full range of transit capital projects. Additional flexibility is built into these programs by affording discretion to the Governor to transfer funds from smaller urbanized areas to rural areas, and vice versa.

SECTION 5—OPERATING ASSISTANCE

The proposed legislation includes several important amendments to section 5, the formula grant program. Most significant among the proposed changes is the phaseout of operating assistance grants after fiscal year 1984. In fiscal year 1982, the aggregate authorization for the three capital funding tiers in section 5 was \$1.04 billion. By comparison, the proposed aggregate funding total for fiscal year 1983 would be \$640 million, for fiscal year 1984, the last year in which Federal grants for operating assistance would be available, the total dollar amount would be \$275 million.

The administration opposes the continuation of operating subsidies because they often result in unrealistic fare structures, over-expansive transit service and undue Federal involvement in local management decisions. A reduction of Federal involvement in operating assistance will stimulate responsiveness in local forums to the need for greater economy and efficiency in transit operations. Federal operating assistance last year provided approximately 17 percent of total operating costs, and we believe the gradual phaseout of operating assistance will permit grantees some latitude in adjusting their programs and funding mechanisms. Also, as a means of lessening any negative impact on section 5 operating assistance recipients, we propose to distribute half of the remaining operating funds based on the 1970 Federal census, and the other half based on the 1980 Federal census. This distribution favors traditional recipients of section 5 assistance, while at the same time providing funds for those new urbanized areas which received section 5 grants for the first time last year. This method employs the same approach used by Congress to distribute the funds for fiscal year 1982.

Under our proposal, the major changes to the section 18 program for nonurbanized areas would parallel the changes to the section 5 program. Section 18 assistance would be distributed on the basis of both the 1970 and the 1980 censuses, and would not be available to subsidize operating expenses after fiscal year 1984.

BENCHMARK PRICING; LABOR PROTECTIONS

Other significant provisions in the legislative package include a streamlined procurement process and changes to section 13(c) of the act which deal with labor protections.

The procurement provision would permit the Secretary to establish a benchmark price for buses, representing the maximum Federal contribution. If a recipient elects to use the benchmark price and certifies that it has an open and competitive bidding process, Federal procurement requirements, such as OMB Circular A-102 and life-cycle costing, would not apply to that particular procurement.

Regarding section 13(c), we are proposing three changes. First, we are proposing to transfer responsibility for administering sec-

tion 13(c) labor protections from the Secretary of Labor to the Secretary of Transportation. The Department of Labor has agreed to this change. We feel that section 13(c) must be administered as part of the overall transit program so as to insure that the labor protections are administered in a manner that is consistent with transportation policy. Second, to encourage transit providers to develop paratransit services, such privately-provided service would be exempt from the requirements of section 13(c). Third, as I mentioned earlier, section 13(c) would not be applicable to our section 9 capital formula program.

We believe that these amendments will better enable us to address the problems facing transit systems and will insure a strong, more effective, and efficient mass transportation program.

[Copies of the two bills being considered follow:]

97TH CONGRESS
2D SESSION

S. 2367

Entitled the "Transit Assistance Act of 1982".

IN THE SENATE OF THE UNITED STATES

APRIL 14 (legislative day, APRIL 13), 1982

Mr. LUGAR (for himself and Mr. GAHN) (by request) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

Entitled the "Transit Assistance Act of 1982".

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SHORT TITLE

4 SECTION 1. This Act may be cited as the "Transit As-
5 sistance Act of 1982".

6 AMENDMENTS TO SECTION 3 DISCRETIONARY CAPITAL

7 GRANT PROGRAM

8 SEC. 2. (a) Section 3(a)(2)(A) of the Urban Mass Trans-
9 portation Act of 1964 (49 U.S.C. 1601 et seq.) (hereinafter
10 referred to as the "Act") is amended—

11 (1) by striking out "and" at the end of clause (i);

1 (2) by striking out the period at the end of clause

2 (ii) and inserting in lieu thereof “; and”; and

3 (3) by adding at the end thereof the following new
4 clause:

5 “(iii) sufficient capability to maintain the
6 facilities and equipment.”.

7 (b) The second sentence of section 4(a) of the Act is
8 amended by striking out “80 per centum of the net project
9 cost” and inserting in lieu thereof “50 per centum of the net
10 project cost”.

11 (c) The first sentence of section 4(c)(3)(A) of the Act is
12 amended by striking “; and \$1,580,000,000” and all that
13 follows down through and including “1983” and inserting
14 “and” immediately following “1981;”.

15 ADMINISTRATIVE EXPENSES AND CAPITAL FORMULA

16 PROGRAM AUTHORIZATIONS

17 SEC. 3. (a) Effective October 1, 1982, section 4(d) of
18 the Act is amended to read as follows:

19 “(d) There are authorized to be appropriated for admin-
20 istrative costs, including salaries and expenses necessary to
21 carry out the functions of this Act, such sums as may be
22 necessary.”.

23 (b) Effective October 1, 1982, section 4(e) of the Act is
24 amended to read as follows:

1 “(e)(1) To finance grants under sections 3, 4(i), 8, 9, and
2 16(b)(2) of this Act there are authorized to be appropriated
3 not to exceed \$1,861,000,000 for the fiscal year ending Sep-
4 tember 30, 1983; \$1,920,000,000 for the fiscal year ending
5 September 30, 1984; \$2,205,000,000 for the fiscal year
6 ending September 30, 1985; and \$2,280,000,000 for the
7 fiscal year ending September 30, 1986. Any amounts so ap-
8 propriated shall remain available until expended.

9 “(2) Of the amount available under paragraph (1) for
10 each year, the Secretary shall make available—

11 “(A) 10 per centum for grants under sections 3,
12 4(i), and 16(b)(2); and

13 “(B) 90 per centum for grants under sections 8
14 and 9.

15 “(3) To finance grants under sections 18 and 21 of this
16 Act there are authorized to be appropriated not to exceed
17 \$75,000,000 for the fiscal year ending September 30, 1982;
18 \$75,000,000 for the fiscal year ending September 30, 1983;
19 \$75,000,000 for the fiscal year ending September 30, 1984;
20 \$75,000,000 for the fiscal year ending September 30, 1985;
21 and \$75,000,000 for the fiscal year ending September 30,
22 1986, except that no funds are authorized to be appropriated
23 for grants under section 18 after September 30, 1984. Any
24 amounts so appropriated shall remain available until expend-
25 ed.”.

1 SEC. 4. Effective October 1, 1982, section 4(f) of the
2 Act is amended to read as follows:

3 “(f) There are authorized to be appropriated to carry out
4 the purposes of sections 6, 10, and 11 of this Act aggregate
5 sums not to exceed \$51,600,000 by September 30, 1982;
6 \$96,600,000 by September 30, 1983; \$143,600,000 by Sep-
7 tember 30, 1984; \$190,600,000 by September 30, 1985; and
8 \$237,600,000 by September 30, 1986. Any amounts so ap-
9 propriated shall remain available until expended.”.

10 AMENDMENTS TO SECTION 5 FORMULA GRANT PROGRAM

11 SEC. 5. (a) Section 5(a) of the Act is amended—

12 (1) by striking out paragraph (1)(B) and inserting
13 in lieu thereof the following:

14 “(B) There are authorized to be appropriated for the
15 purposes of this paragraph, \$900,000,000 for the fiscal year
16 ending September 30, 1981; \$791,100,000 for the fiscal year
17 ending September 30, 1982; \$440,000,000 for the fiscal year
18 ending September 30, 1983; and \$175,000,000 for the fiscal
19 year ending September 30, 1984.”;

20 (2) in paragraph (2)(B), by striking out “and” and
21 all that follows down through and including the period
22 at the end thereof and inserting in lieu thereof the fol-
23 lowing: “\$158,200,000 for the fiscal year ending Sep-
24 tember 30, 1982; \$130,000,000 for the fiscal year

1 ending September 30, 1983; and \$65,000,000 for the
2 fiscal year ending September 30, 1984.”; and

3 (3) in paragraph (3)(B), by striking out “and” and
4 all that follows down through and including the period
5 at the end thereof and inserting in lieu thereof the fol-
6 lowing: “\$86,300,000 for the fiscal year ending Sep-
7 tember 30, 1982; \$70,000,000 for the fiscal year
8 ending September 30, 1983; and \$35,000,000 for the
9 fiscal year ending September 30, 1984.”.

10 (b) Section 5(a) of the Act is amended in paragraphs
11 (a)(1)(A)(i), (a)(2)(A)(i)(1), and (a)(2)(A)(ii)(1) by striking out
12 “as shown by the latest available Federal census;” and in-
13 serting in lieu thereof “, except that sums shall be appor-
14 tioned and allocated using data from the 1970 decennial
15 census for one-half of the sums appropriated and the remain-
16 der shall be apportioned and allocated on the basis of data
17 from the 1980 decennial census;”.

18 (c) Section 5(c)(4) of the Act is amended—

19 (1) by inserting “(A)” before “Sums”;

20 (2) by designating the second sentence as subpara-
21 graph (B), and by striking out “Any” and inserting in
22 lieu thereof “Prior to October 1, 1982, any”; and

23 (3) by adding at the end thereof the following new
24 paragraph:

1 “(C) After September 30, 1982, any amounts remaining
2 unobligated by the Secretary at the end of such period or
3 which are deobligated by the Secretary after the end of such
4 period shall be added to the amount available under section
5 4(e)(1).

6 “(D) Apportionments for fiscal year 1975 shall be
7 deemed to have lapsed on September 30, 1977, and appor-
8 tionments for fiscal year 1976 shall be deemed to have lapsed
9 on September 30, 1978.”.

10 (d) Section 5(d)(1) of the Act is amended by adding at
11 the end thereof the following: “The Secretary shall not ap-
12 prove a project for the payment of operating expenses after
13 September 30, 1984.”.

14 (e) Section 5(g) of the Act is amended—

15 (1) by striking out “and” at the end of paragraph
16 (1);

17 (2) by striking out the period at the end of clause
18 (2) and inserting in lieu thereof “; and”; and

19 (3) by adding at the end thereof the following new
20 paragraph:

21 “(3) sufficient capability to maintain the facilities
22 and equipment.”.

23 (f) Section 5(i)(3) of the Act is amended to read as fol-
24 lows: “(3) an assurance that any public mass transportation
25 system receiving operating assistance under this section has a

1 locally developed process to solicit and consider public com-
2 ment prior to raising fares or reducing transit service.”.

3 (g) Section 5(m) of the Act is repealed and section 5(n)
4 is redesignated as section 5(m).

5 CAPITAL FORMULA PROGRAM FOR URBANIZED AREAS

6 SEC. 6. Section 9 of the Act is amended to read as
7 follows:

8 “CAPITAL FORMULA PROGRAM FOR URBANIZED AREAS

9 “SEC. 9. (a) To make grants under this section, the Sec-
10 retary shall apportion sums appropriated pursuant to section
11 4(e)(1) and made available pursuant to section 4(e)(2)(B).
12 Such sums shall be made available for expenditure in urban-
13 ized areas or parts thereof on the basis of a formula under
14 which urbanized areas or parts thereof will be entitled to re-
15 ceive an amount equal to the product of the total amount so
16 apportioned multiplied by the ratio which the non-Federal
17 mass transportation operating revenue of such urbanized
18 area, or part thereof, bears to the total national non-Federal
19 mass transportation operating revenue of all urbanized areas
20 in all the States, except that no urbanized area or portion
21 thereof which is within one State shall receive in excess of 20
22 per centum of the total amount apportioned under this sub-
23 section. As used in this subsection, the term ‘non-Federal
24 mass transportation operating revenue’ shall include fares,
25 State and local noncapital subsidies, and other noncapital

1 transit revenues, but shall not exceed, for any urban area or
2 part thereof, the actual annual operating expenses of such
3 urban area or part thereof that are not paid with Federal
4 assistance provided under this Act.

5 “(b)(1) Grants under this section shall be available to
6 finance the planning, acquisition, construction, and improve-
7 ment of facilities and equipment and spare parts for transit
8 vehicles for use, by operation or lease or otherwise, in mass
9 transportation service. Such grants shall not be available for
10 the construction of new fixed-guideway systems or extensions
11 to existing systems other than exclusive facilities for buses.
12 New fixed guideway systems or extensions do not include
13 those projects covered by letters of intent or full-funding con-
14 tracts in effect on the effective date of this amendment or
15 those projects within the federally agreed upon scope for the
16 Washington, District of Columbia, metropolitan area transit
17 system.

18 “(2) Of the amounts available for grants under subsec-
19 tion (a) not less than 2.5 per centum of each apportionment
20 shall be made available to finance transportation planning ac-
21 tivities under section 8 of this Act and the deployment of
22 innovative demonstration results. Nothing herein shall pre-
23 vent recipients from using additional funds available under
24 section 9 for planning purposes. If the amount set aside
25 under this paragraph exceeds local needs, the Governor or

1 designated recipient may, with the concurrence of the metro-
2 politan planning organization, apply to the Secretary for a
3 waiver of all or part of this set-aside.

4 “(3) The Federal grant for any project under this sec-
5 tion shall equal 75 per centum of the net project cost, as
6 determined under section 4(a). The remainder shall be pro-
7 vided in cash, from sources other than Federal funds.

8 “(c)(1) To receive a grant under this section for any
9 fiscal year, a recipient—

10 “(A) shall continue to comply with title VI of the
11 Civil Rights Act of 1964, and subsections (e)(2), (f),
12 and (g) of section 3 of this Act; and

13 “(B) shall also submit a statement of activities to
14 be funded under this section prepared pursuant to sub-
15 section (e), a description of its proposed use of funds,
16 and the certifications required by this section.

17 “(2) Upon receipt of the statement, description, and cer-
18 tifications described in paragraph (1), after finding that a re-
19 cipient is in compliance with paragraph (1)(A), and after com-
20 pliance with the National Environmental Policy Act using
21 the provisions of subsection (f) or otherwise, the Secretary
22 shall make the amounts determined pursuant to subsection (a)
23 available to the recipient.

24 “(d) To receive a grant under this section, the recipient
25 must certify that—

1 “(1) the recipient has or will have the legal, fi-
2 nancial, and technical capacity to carry out the pro-
3 posed project;

4 “(2) the recipient has the authority to apply for
5 the grant under this section;

6 “(3) the recipient will carry out the project in
7 compliance with the Uniform Relocation Assistance
8 and Land Acquisition Policies Act of 1970, section 7,
9 and subsections (a) and (b) of section 13 of this Act;

10 “(4) the recipient will have satisfactory continuing
11 control, through operation, lease, or otherwise, over
12 the use of the facilities or equipment assisted hereunder
13 and will maintain such facilities and equipment in oper-
14 ational order;

15 “(5) except for bus procurements pursuant to sec-
16 tion 12(b)(3), the recipient will use competitive pro-
17 curements, as defined or approved by the Secretary,
18 will not use procurements utilizing exclusionary or dis-
19 criminatorily specifications, and will carry out procure-
20 ments in compliance with section 401 of Public Law
21 95-599;

22 “(6) the recipient will comply with the National
23 Flood Insurance Act of 1968;

24 “(7) the recipient has complied with the require-
25 ments of subsection (e); and

1 “(8) the recipient has available and will provide
2 funds from other than Federal sources as required by
3 subsection (b).

4 “(e) In order to permit public examination and appraisal
5 of statements to be submitted under subsection (c), to en-
6 hance the public accountability of recipients, to stimulate pri-
7 vate sector transportation solutions, and to facilitate coordi-
8 nation of activities with different levels of government, each
9 recipient shall—

10 “(1) make available to the public information con-
11 cerning the amount of funds available under this sec-
12 tion and the range of activities that the recipient pro-
13 poses to undertake with such funds,

14 “(2) develop a proposed statement concerning ac-
15 tivities to be funded in consultation with interested par-
16 ties, including private transportation providers,

17 “(3) publish a proposed statement in such manner
18 to afford affected citizens, private transportation pro-
19 viders, or as appropriate, local elected officials an op-
20 portunity to examine its content and to submit com-
21 ments on the proposed statement and on the perform-
22 ance of the recipient, and

23 “(4) hold one or more public hearings to obtain
24 the views of citizens on mass transportation.

1 In preparing the final statement, the recipient shall consider
2 any such comments and views, particularly those of private
3 transportation providers, and shall, if deemed appropriate by
4 the recipient, modify the proposed statement. The final state-
5 ment shall be made available to the public.

6 “(f)(1) In order to assure that the policies of the Nation-
7 al Environmental Policy Act of 1969, and other provisions of
8 law which further the purposes of such Act (as specified in
9 regulations issued by the Secretary) are most effectively im-
10 plemented in connection with the expenditure of funds under
11 this section, and to assure to the public undiminished protec-
12 tion of the environment, the Secretary, in lieu of the environ-
13 mental protection procedures otherwise applicable, may,
14 under regulations issued by him, provide for the release of
15 funds to recipients who assume all of the responsibilities for
16 environmental review, decisionmaking, and action pursuant
17 to such Act, and such other provisions of law as the regula-
18 tions of the Secretary specify, that would apply to the Secre-
19 tary were he to undertake such projects as Federal projects.
20 The Secretary shall issue regulations to carry out this sub-
21 section only after consultation with the Council on Environ-
22 mental Quality.

23 “(2) The Secretary shall approve the release of funds in
24 accordance with the procedures authorized by this subsection
25 only if, at least fifteen days prior to such approval and prior

1 to any commitment of funds, the applicant has submitted to
2 the Secretary a request for such release accompanied by a
3 certification which meets the requirements of paragraph (3).
4 The Secretary's approval of any such certification shall be
5 deemed to satisfy his responsibilities under the National En-
6 vironmental Policy Act of 1969 and such other provisions of
7 law as the regulations of the Secretary specify insofar as
8 those responsibilities relate to the applications and releases of
9 funds for projects to be carried out pursuant thereto which
10 are covered by such certification.

11 “(3) A certification under the procedures authorized by
12 this subsection shall—

13 “(A) be in a form acceptable to the Secretary;

14 “(B) be executed by the chief executive officer or
15 other officers of the applicant qualified under regula-
16 tions of the Secretary;

17 “(C) specify that the applicant has fully carried
18 out its responsibilities as described under paragraph (1)
19 of this subsection; and

20 “(D) specify that the certifying officer (i) consents
21 to assume the status of a responsible Federal official
22 under the National Environmental Policy Act of 1969
23 and each provision of law specified in regulations
24 issued by the Secretary to the extent that as the provi-
25 sions of such Act or other such provisions of law apply

1 pursuant to paragraph (1) of this subsection, and (ii) is
2 authorized and consents on behalf of the applicant and
3 himself to accept the jurisdiction of the Federal courts
4 for the purpose of enforcement of his responsibilities as
5 such an official.

6 “(g)(1) The Governor, responsible local officials, and
7 publicly owned operators of mass transportation services
8 shall designate a recipient or recipients to receive and dis-
9 pense the funds apportioned under subsection (a) for urban-
10 ized areas with populations of two hundred thousand or more.
11 As used in this section, the term ‘designated recipient’ refers
12 to the recipient selected according to procedures required by
13 this paragraph or section 5(b)(1).

14 “(2) Sums apportioned under subsection (a) for urban-
15 ized areas with populations less than two hundred thousand
16 shall be made available to the Governor. These sums shall be
17 fairly and equitably distributed by the Governor. The Gover-
18 nor shall submit annually a report to the Secretary concern-
19 ing the allocation of funds made available under this para-
20 graph.

21 “(3) Sums apportioned under this section shall be avail-
22 able for obligation by the Governor or designated recipient
23 for a period of three years following the close of the fiscal
24 year for which such sums are apportioned. Any amounts so
25 apportioned remaining unobligated at the end of such period

1 shall be added to the amount available for apportionment
2 under section 4(e)(2)(B).

3 “(h) The Secretary shall not approve a grant for a
4 project under this section unless he finds that such project is
5 part of the approved program of projects required by section
6 8 of this Act.

7 “(i) As soon as practicable after receiving the submis-
8 sions required in this section, the Secretary shall enter into
9 an annual projects agreement with the Governor, his desig-
10 nee, or the recipient of the urbanized area.

11 “(j) Each recipient of assistance under this section shall
12 submit to the Secretary, at a time determined by the Secre-
13 tary, a statement concerning the use of funds made available
14 under this section, together with an assessment by the grant-
15 ee of how such use compares to the statement of activities
16 identified under subsection (c). The recipient shall, at least on
17 an annual basis, make available independently conducted re-
18 views and audits as may be deemed necessary or appropriate
19 by the Secretary to determine whether: (1) the recipient has
20 carried out its activities in a timely manner and has a con-
21 tinuing capacity to carry out those activities in a timely
22 manner; and (2) the recipient has carried out those activities
23 and its certifications in a manner which is not plainly incon-
24 sistent with the requirements of this Act and other applicable
25 laws. The Secretary may make appropriate adjustments in

1 the amount of the annual grants in accordance with the
2 Secretary's findings under this subsection, and may reduce or
3 withdraw such assistance or take other action as appropriate
4 in accordance with the Secretary's review and audits under
5 this subsection.

6 “(k) The provisions of section 1001 of title 18, United
7 States Code, apply to any certification or submission under
8 this Act. In addition, if any false or fraudulent statement or
9 related act within the meaning of section 1001 of title 18,
10 United States Code, is made in connection with a certifica-
11 tion or submission under this Act, the Secretary may termi-
12 nate and seek appropriate reimbursement of the affected
13 grant or grants directly or by offsetting funds available or to
14 be available under this Act.

15 “(l) A recipient may request the Secretary to approve
16 its procurement system. If, after consultation with the Office
17 of Federal Procurement Policy, the Secretary finds that such
18 system provides for competitive procurements, the Secretary
19 shall approve such system. Such approval shall be binding
20 until withdrawn. A certification from the recipient under sub-
21 section (b)(5) is still required.

22 “(m) No Federal requirements under this Act other than
23 those specified in this section shall apply to grants made
24 under this section.”.

1 OPERATING COSTS FOR UNIVERSITIES

2 SEC. 7. Section 11(b) of the Act is repealed, and section
3 11(a) is amended by striking out "(a)" immediately following
4 "SEC. 11."

5 FEDERAL PROCUREMENT FACTORS

6 SEC. 8. Section 12(b) of the Act is amended by adding
7 at the end thereof the following new paragraph:

8 "(3)(A) The Secretary may, at least annually, establish
9 a benchmark price which represents the maximum amount of
10 Federal participation in the acquisition of buses by a recipient
11 of funds under this Act.

12 "(B) Whenever the Secretary establishes a benchmark
13 price for any type of bus pursuant to paragraph (A), any re-
14 cipient of funds under this Act may elect to have such bench-
15 mark price apply to its procurement of that type of bus. If a
16 recipient makes such an election and certifies that it has a
17 competitive procurement system, then the procurement of
18 that bus shall be exempt from all Federal procurement re-
19 quirements, including Office of Management and Budget Cir-
20 cular A-102 and life cycle costing provisions."

21 LABOR STANDARDS

22 SEC. 9. (a) Section 13(c) of the Act is amended—

23 (1) by striking out "Labor" and inserting in lieu
24 thereof "Transportation"; and

1 (2) by adding at the end thereof the following:

2 "This subsection shall not extend to employees of pri-
3 vate mass transportation companies who provide
4 shared-ride transportation services on demand or on a
5 flexible schedule."

6 (b) Upon enactment of these amendments, the Director
7 of the Office of Management and Budget is authorized to pro-
8 vide for the transfer or other disposition of personnel, posi-
9 tions, assets, liabilities, grants, contracts, property, records,
10 and unexpended balances of appropriations, authorizations,
11 and other funds held, used, arising from, available to, or to be
12 made available in connection with the transfer of functions
13 herein required. The Director of the Office of Management
14 and Budget may establish a reasonable transfer date other
15 than the effective date of these amendments.

16 **AMENDMENTS TO THE REPORTING SYSTEM**

17 SEC. 10. Section 15(b) of the Act is amended by insert-
18 ing ", 9 or 21" immediately after "section 5".

19 **AMENDMENTS TO THE SPECIAL NEEDS PROGRAM**

20 SEC. 11. Section 16(b)(2) is amended by striking out
21 "4(c)(3) of this Act, 2 per centum" and inserting in lieu
22 thereof "4(e)(1) and made available pursuant to section
23 4(e)(2)(A) of this Act, an amount."

1 AMENDMENTS TO FORMULA GRANTS FOR NONURBANIZED
2 AREAS

3 SEC. 12. (a) The second sentence of section 18(a) of the
4 Act is amended by striking "as shown by the latest available
5 Federal census" and adding in lieu thereof "except that such
6 sums shall be apportioned and allocated using data from the
7 1970 decennial census for one-half of the sums appropriated
8 and the remainder shall be apportioned and allocated on the
9 basis of data from the 1980 decennial census".

10 (b) The first sentence of section 18(b) of the Act is
11 amended by adding after "urbanized areas", "except that the
12 program of projects shall not include any project for the pay-
13 ment of subsidies for operating expenses after September 30,
14 1984"; and

15 (c) Section 18(c) of the Act is amended by adding after
16 the first sentence the following: "After September 30, 1982,
17 any amounts remaining unobligated at the end of such period
18 or which are deobligated at the end of such period shall be
19 added to the amount available for apportionment under sec-
20 tion 4(e)(3).".

21 CAPITAL FORMULA PROGRAM FOR AREAS OTHER THAN
22 URBANIZED AREAS

23 SEC. 13. Section 21 of the Act is amended by striking
24 out section 21 and inserting in lieu thereof the following:

1 "CAPITAL FORMULA PROGRAM FOR AREAS OTHER THAN
2 URBANIZED AREAS

3 "SEC. 21. (a) The amounts available for grants under
4 this subsection shall be apportioned by the Secretary to the
5 Governor of each State for use in areas other than urbanized
6 areas. The Governor shall be entitled to receive an amount
7 equal to the amount available under this subsection multi-
8 plied by the ratio which the population of areas other than
9 urbanized areas in the State bears to the total population of
10 areas other than urbanized areas in all States. The Secretary
11 shall use the latest available Federal census to calculate
12 these ratios.

13 "(b)(1) Grants under this section shall be available to
14 finance the planning, acquisition, construction, and improve-
15 ment of facilities and equipment and spare parts for transit
16 vehicles for use, by operation or lease or otherwise, in mass
17 transportation services.

18 "(2) Of the amounts available for grants under this sec-
19 tion, not less than 2.5 per centum shall be used to finance
20 transportation planning activities in accordance with section
21 8 of this Act. Nothing herein shall prevent recipients from
22 using additional funds available under section 21 for planning
23 purposes. If the amount set aside under this paragraph ex-
24 ceeds local needs, the Governor may apply to the Secretary
25 for a waiver of all or part of this set-aside.

1 “(3) The Federal grant for any project under this sec-
2 tion shall equal 75 per centum of the net project cost, as
3 determined under section 4(a). The remainder shall be pro-
4 vided in cash from sources other than Federal funds.

5 “(c)(1) Sums apportioned under this section shall be
6 made available to the Governor and shall be fairly and equi-
7 tably distributed. The Governor shall submit annually a
8 statement to the Secretary concerning the allocation of funds
9 made available under this paragraph.

10 “(2) Sums apportioned under this section shall be avail-
11 able for obligation by the Governor for a period of three years
12 following the close of the fiscal year for which such sums are
13 apportioned. Any amounts so apportioned remaining unobli-
14 gated at the end of such period shall be added to the amount
15 available for apportionment under section 4(e)(3).

16 “(d) Subsections (c), (d), (e), (f), (i), (j), (k), and (l) of
17 section 9 of this Act shall apply to the Governor for grants
18 awarded under this section.

19 “(e) The Governor may transfer an amount of the
20 State's apportionment under this section to supplement funds
21 apportioned to urbanized areas with populations less than
22 two hundred thousand under section 9(a) of this Act. The
23 Governor may also transfer an amount of the apportionment
24 for urbanized areas with populations less than two hundred

1 thousand under section 9(a) of this Act to supplement funds
2 apportioned under this section.

3 INTERCITY BUS SERVICE

4 SEC. 14. Section 22 of the Act is repealed.

5 WATERBORNE TRANSPORTATION DEMONSTRATION

6 PROJECT

7 SEC. 215. Section 320(b) of the Surface Transportation
8 Assistance Act of 1978 (Public Law 95-599) is amended by
9 adding at the end thereof the following: "No funds are au-
10 thorized to be appropriated to carry out the provisions of sub-
11 section (a) after September 30, 1982."

12 REPEAL OF SAFETY AUTHORITY

13 SEC. 16. Section 107 of the National Mass Transporta-
14 tion Assistance Act of 1974 (Public Law 93-503) is re-
15 pealed.

16 SAVINGS PROVISION

17 SEC. 17. Notwithstanding the revisions made by these
18 amendments, the Federal share of the total project cost of
19 any project covered by a full funding contract or letter of
20 intent in effect on the effective date of this amendment shall
21 not be changed.

97TH CONGRESS
2D SESSION

S. 2377

Entitled the "Mass Transportation Act of 1982".

IN THE SENATE OF THE UNITED STATES

APRIL 15 (legislative day, APRIL 13), 1982

Mr. D'AMATO (for himself, Mr. WEICKER, Mr. HEINZ, and Mr. MOYNIHAN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

Entitled the "Mass Transportation Act of 1982".

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Mass Transportation Act
4 of 1982".

5 AMENDMENTS TO SECTION 3 CAPITAL GRANT PROGRAM

6 SEC. 101. (a) Section 3(a)(2)(A) of the Urban Mass
7 Transportation Act of 1964 (hereinafter referred to as the
8 "Act") is amended—

9 (1) by striking out "this section" in the first line
10 and inserting in lieu thereof "subsection (a)";

11 (2) by striking out "and" at the end of clause (i);

1 (3) by striking out the period at the end of clause

2 (ii) and inserting in lieu thereof “; and”; and

3 (4) by adding at the end thereof the following:

4 “(iii) sufficient capability to maintain the facilities and
5 equipment.”.

6 (b) The first sentence of section 3(a)(4) is amended by
7 striking out “this section” and inserting in lieu thereof “sub-
8 section (a)”.

9 (c) Section 3 of the Act is amended by adding at the end
10 thereof the following new subsection:

11 “(i)(1) Pursuant to this subsection, the Secretary shall
12 make public mass transportation grants to finance the plan-
13 ning, acquisition, construction, improvement, and operating
14 costs of facilities and equipment for use, by operation or lease
15 or otherwise, in mass transportation service. Such grants
16 may include projects that enhance the effectiveness of any
17 mass transportation project.

18 “(2) To provide grants to urbanized areas with a popu-
19 lation of two hundred thousand or more, the Secretary shall
20 apportion for expenditure for each fiscal year the sums au-
21 thorized and appropriated pursuant to section 4(k)(2)(B) as
22 follows:

23 “(A) Sixty-five per centum of such sums shall be
24 made available for expenditure on the basis of a formu-
25 la under which such urbanized areas or parts thereof

1 will be entitled to receive an amount equal to the sum
2 of—

3 “(i) one-half of the total amount so appor-
4 tioned multiplied by a ratio for that urbanized
5 area determined on the basis of bus revenue vehi-
6 cle miles, as determined by the Secretary; and

7 “(ii) one-half of the total amount so appor-
8 tioned multiplied by a ratio for that urbanized
9 area determined on the basis of population
10 weighted by a factor of density, as determined by
11 the Secretary.

12 As used in this section, the term “density” means the
13 number of inhabitants per square mile. Where the term
14 “population” is used in this section it means population
15 as designated by the Bureau of the Census as shown
16 by the latest available Federal census.

17 “(B) Thirty-five per centum of such sums shall be
18 made available for expenditure on the basis of a formu-
19 la under which such urbanized areas or parts thereof
20 will be entitled to receive an amount equal to the sum
21 of—

22 “(i) 70 per centum of the total amount so ap-
23 portioned multiplied by a ratio for that urbanized
24 area determined on the basis of rail revenue vehi-
25 cle miles, as determined by the Secretary; and

1 “(ii) 30 per centum of the total amount so
2 apportioned multiplied by a ratio for that urban-
3 ized area determined on the basis of rail route
4 miles, as determined by the Secretary.

5 “(3) To make grants to urbanized areas with a popula-
6 tion of less than two hundred thousand, the Secretary shall
7 apportion for expenditure for each fiscal year the sums au-
8 thorized and appropriated pursuant to section 4(k)(2)(C) as
9 follows:

10 “(A) one-half of the total amount so apportioned
11 multiplied by the ratio which the population of such an
12 urbanized area or part thereof, as designated by the
13 Bureau of the Census, bears to the total population of
14 all such urbanized areas in all the States; and

15 “(B) one-half of the total amount so apportioned
16 multiplied by a ratio for that urbanized area deter-
17 mined on the basis of population weighted by a factor
18 of density, as determined by the Secretary.

19 “(4) The Federal grant for any construction project
20 under this subsection shall not exceed 80 per centum of the
21 cost of the construction project, as determined under section
22 4(a) of the Act. The Federal grant for any project for operat-
23 ing expenses shall not exceed 50 per centum of the cost of
24 such operating expense project. The remainder shall be pro-
25 vided in cash from sources other than Federal funds or rev-

1 enues from the operation of public mass transportation sys-
2 tems. Any public or private transit system funds so provided
3 shall be solely from undistributed cash surpluses, replacement
4 or depreciation funds or reserves available in cash, or new
5 capital. The amount of any grant under this subsection which
6 may be utilized for operating assistance may not exceed 50
7 per centum of all funds allocated to any recipient during each
8 fiscal year, and may not, in any event, exceed the amount of
9 funds obligated to the recipient in fiscal year 1982 under
10 paragraph (1)(B), (2)(C), and (3)(B) of section 5(a) of this Act.

11 “(5)(A) The Governor, responsible local officials, and
12 publicly owned operators of mass transportation services in
13 accordance with the planning process required under section
14 8 of the Act shall designate a recipient or recipients to re-
15 ceive and dispense the funds apportioned under this section
16 that are attributable to urbanized areas of two hundred thou-
17 sand or more population. In any case in which a statewide or
18 regional agency or instrumentality is responsible under State
19 law for the financing, construction, and operation, directly,
20 by lease, contract, or otherwise, of public transportation serv-
21 ices, such agency or instrumentality shall be the recipient to
22 receive and dispense such funds. The term “designated re-
23 cipient” as used in this subsection shall refer to the recipient
24 selected according to the procedures required by this section.

1 “(B) Sums apportioned under this subsection not made
2 available for expenditure by designated recipients in accord-
3 ance with the terms of subparagraph (A) of this section shall
4 be made available to the Governor for expenditure in urban-
5 ized areas or parts thereof in accordance with the planning
6 process required under section 8 of the Act and shall be fairly
7 and equitably distributed. The Governor shall submit annual-
8 ly a report to the Secretary concerning the allocation of funds
9 made available under this paragraph.

10 “(6) The Governor may transfer an amount of the
11 State’s apportionment under paragraph (3) to supplement
12 funds apportioned to the State under section 18(a) of the Act,
13 or to supplement funds apportioned to urbanized areas with a
14 population of two hundred thousand or more under this sub-
15 section. The Governor may transfer an amount of the State’s
16 apportionment under section 18(a) to supplement funds ap-
17 portioned to the State under paragraph (3). Amounts trans-
18 ferred shall be subject to the capital and operating assistance
19 limitations applicable to the original apportionments of such
20 amounts. The Governor may make such transfers as provided
21 for in this subsection only after consultation with, and ap-
22 proval by, responsible local officials and publicly owned oper-
23 ators of mass transportation services in those areas to which
24 the funding was originally apportioned by the Governor in
25 accordance with this section.

1 “(7) Sums apportioned under this section shall be avail-
2 able for obligation by the Governor or designated recipient
3 for a period of three years following the close of the fiscal
4 year for which such sums are apportioned. Any amounts so
5 apportioned remaining unobligated at the end of such period
6 shall be added to the amount available for apportionment
7 under this section for the succeeding fiscal year.

8 “(8) Of the amounts available for grants under this sub-
9 section, not less than 2.5 per centum of each apportionment
10 shall be made available to finance transportation planning ac-
11 tivities under section 8 of the Act and the deployment of
12 innovative demonstration results. Nothing herein shall pre-
13 vent recipients from using additional funds available under
14 this subsection for planning purposes. If the amount set aside
15 under this paragraph exceeds local needs, the Governor or
16 designated recipient may, with the concurrence of the metro-
17 politan planning organization, apply to the Secretary for a
18 waiver of all or part of this set-aside.

19 “(9)(A) To receive a grant under this subsection for any
20 fiscal year, a recipient—

21 “(i) shall comply with title VI of the Civil Rights
22 Act of 1964, and subsections (e)(2), (f), and (g) of sec-
23 tion 3 of this Act;

24 “(ii) shall submit a statement of activities to be
25 funded under this subsection prepared pursuant to

1 paragraph (11), a description of its proposed use of
2 funds, and the certifications required by this subsection;
3 and

4 “(iii) shall provide satisfactory assurances, in such
5 manner and form as may be required by the Secretary
6 and in accordance with such terms and conditions as
7 the Secretary may prescribe, that the rates charged el-
8 derly and handicapped persons during nonpeak hours
9 for transportation utilizing or involving the facilities
10 and equipment of the project financed with assistance
11 under this subsection will not exceed one-half of the
12 rates generally applicable to other persons at peak
13 hours, whether the operation of such facilities and
14 equipment is by the applicant or is by another entity
15 under lease or otherwise.

16 “(B) Upon receipt of the statement, description, and cer-
17 tifications required by this section, after finding that a recipi-
18 ent is in compliance with paragraph (9)(A), and after compli-
19 ance with the National Environmental Policy Act using the
20 provisions of section 12(a) or otherwise, the Secretary shall
21 make the amounts pursuant to this subsection available to the
22 recipient.

23 “(10) To receive a grant under this subsection, the re-
24 cipient must certify that the recipient—

1 “(A) has or will have the legal, financial, and
2 technical capacity to carry out the proposed project;

3 “(B) has the authority to apply for the grant
4 under this subsection;

5 “(C) will carry out the project in compliance with
6 the Uniform Relocation Assistance and Land Acquisition
7 Policies Act of 1970 and section 7 of the Act;

8 “(D) will have satisfactory continuing control,
9 through operation, lease, or otherwise, over the use of
10 the facilities or equipment assisted hereunder and will
11 maintain such facilities and equipment;

12 “(E) in carrying out procurements under this sub-
13 section, competitive procurements will be used as de-
14 fined or approved by the Secretary, will not use pro-
15 curements utilizing exclusionary or discriminatory
16 specifications, and will carry out procurements in com-
17 pliance with section 401 of Public Law 95-599;

18 “(F) will comply with the National Flood Insur-
19 ance Act of 1968;

20 “(G) has complied with the requirements of sec-
21 tion 12(a); and

22 “(H) has available and will provide funds from
23 other than Federal sources as required by section 4,
24 and

1 “(I) has a locally developed process to solicit and
2 consider public comment prior to raising fares or reduc-
3 ing transit service.

4 “(11) Each recipient shall—

5 “(A) make available to the public information con-
6 cerning the amount of funds available under this sub-
7 section and the range of activities that the recipient
8 proposes to undertake with such funds,

9 “(B) develop a proposed statement concerning ac-
10 tivities to be funded in consultation with interested par-
11 ties, including private transportation providers,

12 “(C) publish a proposed statement in such a
13 manner to afford affected citizens, private transportation
14 providers, or as appropriate, local elected officials an
15 opportunity to examine its content and to submit com-
16 ments on the proposed statement and on the perform-
17 ance of the recipient, and

18 “(D) hold one or more public hearings to obtain
19 the views of citizens on activities to be funded under
20 this subsection. In preparing the final statement, the
21 recipient shall consider any such comments and views,
22 particularly those of private transportation providers,
23 and shall, if deemed appropriate by the recipient,
24 modify the proposed statement. The final statement
25 shall be made available to the public. Compliance with

1 this paragraph will satisfy the requirements of subsec-
2 tion (d) of this section.

3 “(12)(A) In order to assure that the National Environ-
4 mental Policy Act of 1969, and other provisions of law which
5 further the purposes of such Act (as specified in regulations
6 issued by the Secretary), are effectively implemented in con-
7 nection with the expenditure of funds under this subsection,
8 and to assure to the public undiminished protection of the
9 environment, the Secretary, in lieu of the environmental pro-
10 tection procedures otherwise applicable, may, under regula-
11 tions issued by him, provide for the release of funds to recipi-
12 ents who assume all of the responsibilities for environmental
13 review, decisionmaking, and acting pursuant to such Act, and
14 such other provisions of law as the regulations of the Secre-
15 tary specify, that would apply to the Secretary were he to
16 undertake such projects as Federal projects. The Secretary
17 shall issue regulations to carry out this section only after con-
18 sultation with the Council on Environmental Quality.

19 “(B) The Secretary shall approve the release of funds in
20 accordance with the procedures authorized by this paragraph
21 only if, at least fifteen days prior to such approval and prior
22 to any commitment of funds, the applicant has submitted to
23 the Secretary a request for such release accompanied by a
24 certification which meets the requirements of subparagraph
25 (C). The Secretary's approval of any such certification shall

1 be deemed to satisfy his responsibilities under the National
2 Environmental Policy Act of 1969 and such other provisions
3 of law as the regulations of the Secretary specify insofar as
4 those responsibilities relate to the application and release of
5 funds for projects to be carried out pursuant thereto which
6 are covered by such certification.

7 “(C) A certification under the procedures authorized by
8 this paragraph shall—

9 “(i) be in a form acceptable to the Secretary;

10 “(ii) be executed by the chief executive officer or
11 other officers of the applicant qualified under regula-
12 tions of the Secretary;

13 “(iii) specify that the applicant has fully carried
14 out its responsibilities as described under subparagraph
15 (A); and

16 “(iv) specify that the certifying officer—

17 “(I) consents to assume the status of a re-
18 sponsible Federal official under the National Envi-
19 ronmental Policy Act of 1969 and each provision
20 of law specified in regulations issued by the Sec-
21 retary to the extent that as the provisions of such
22 Act or other such provisions of law apply pursu-
23 ant to subparagraph (A), and

24 “(II) authorized and consents on behalf of
25 the applicant and himself to accept the jurisdiction

1 of the Federal courts for the purposes of enforce-
2 ment of his responsibilities as such an official.

3 “(13) The Secretary shall not approve a grant for a
4 project under this subsection unless he finds that such project
5 is part of the approved program of projects required by sec-
6 tion 8 of the Act.

7 “(14) As soon as practicable after receiving the submis-
8 sions required in this subsection, the Secretary shall enter
9 into an annual projects agreement with the Governor, his
10 designee, or the designated recipient of each urbanized area.

11 “(15) Each recipient of assistance under this subsection
12 shall submit to the Secretary, at a time determined by the
13 Secretary, a statement concerning the use of funds made
14 available under this subsection together with an assessment
15 of how such use compares to the statement of activities iden-
16 tified under paragraph (11). The recipient shall, at least on
17 an annual basis, make available independently conducted re-
18 views and audits as may be deemed necessary or appropriate
19 by the Secretary to determine whether—

20 “(A) the recipient has carried out its activities in
21 a timely manner; and

22 “(B) has a continuing capacity to carry out those
23 activities in a manner which is not plainly inconsistent
24 with the requirements of the Act and other applicable
25 laws. The Secretary may make appropriate adjust-

1 ments in the amount of the annual grants in accord-
2 ance with the Secretary's findings under this para-
3 graph, and may reduce or withdraw such assistance or
4 take other action as appropriate in accordance with the
5 Secretary's review and audits under this paragraph.

6 “(16) The provisions of section 1001 of title 18, United
7 States Code, apply to any certification or submission under
8 this subsection. In addition, if any false or fraudulent state-
9 ment or related act within the meaning of section 1001 of
10 title 18, United States Code, is made in connection with a
11 certification or submission under this subsection, the Secre-
12 tary may terminate and seek appropriate reimbursement of
13 the affected grant or grants directly or by offsetting funds
14 available or to be available under this subsection.

15 “(17) A recipient may request the Secretary to approve
16 its procurement system. If, after consultation with the Office
17 of Federal Procurement Policy, the Secretary finds that such
18 system provides for competitive procurements, the Secretary
19 shall approve such systems for use for all procurements fi-
20 nanced under this subsection. Such approval shall be binding
21 until withdrawn. A certification from the recipient under
22 paragraph (10)(E) is still required.”.

23 AMENDMENTS TO SECTION 4

24 SEC. 102. (a) The second sentence of section 4(a) of the
25 Urban Mass Transportation Act of 1964 is amended by strik-

1 ing out "an amount equal to 80 per centum of the net project
2 cost" and inserting in lieu thereof "an amount equal to 70
3 per centum of the net project cost for projects funded under
4 section 3(a) of this Act".

5 (b) The first sentence of section 4(c)(3)(A) of the Act is
6 amended by—

7 (1) inserting "and" before "\$1,600,000,000", and

8 (2) striking out the semicolon after "September
9 30, 1982" and inserting in lieu thereof a period.

10 (c) Section 4(d) of the Act is amended to read as follows:

11 "(d) There are authorized to be appropriated such sums
12 as are necessary for administrative costs, including salaries
13 and expenses necessary to carry out the provisions of this
14 Act."

15 (d) Effective October 1, 1982, section 4(f) of the Act is
16 amended to read as follows:

17 "(f) there are authorized to be appropriated to carry out
18 the purposes of sections 6, 10, and 11 of this Act aggregate
19 sums not to exceed \$96,600,000 by September 30, 1983;
20 \$141,600,000 by September 30, 1984; \$186,600,000 by
21 September 30, 1985; and \$231,600,000 by September 30,
22 1986. Any amounts so appropriated shall remain available
23 until expended."

1 (e) Section 4 of the Urban Mass Transportation Act of
2 1964 is amended by adding at the end thereof the following
3 new subsections:

4 “(j)(1) The Secretary is authorized, in accordance with
5 this section, to make capital grants to States and local public
6 bodies and agencies thereof on such terms and conditions as
7 the Secretary shall provide to permit expedited grants for
8 repair or replacement of public transportation equipment and
9 facilities which the Secretary finds have recently suffered se-
10 rious damage as the result of—

11 “(A) a natural disaster over a wide area, or

12 “(B) a catastrophic occurrence from any cause,
13 which seriously disrupts scheduled public transportation
14 services.

15 “(2) No funds shall be expended under this section
16 unless the Secretary has received an application from the
17 State or local public body, or agency, as the case may be,
18 and unless an emergency has been declared by the Governor
19 of the State and concurred in by the Secretary, except that if
20 the President has declared emergency or a major disaster
21 within the meaning of the Disaster Relief Act of 1974 (Public
22 Law 93-288), concurrence of the Secretary is not required.

23 “(3) Notwithstanding subsection (a), the Federal grant
24 for any project under this section may, at the discretion of the
25 Secretary, equal up to 100 per centum of the net project cost.

1 “(4) For fiscal years beginning after September 30,
2 1982, sums authorized to be appropriated by subsection
3 (k)(2)(A) are authorized to be used to carry out this subsec-
4 tion.”.

5 “(k)(1) To finance grants and loans under subsection (a)
6 and (i) of section 3 of this Act and to finance grants under
7 section 18 of this Act, there are hereby authorized to be ap-
8 propriated \$3,200,000,000 for the fiscal year ending Septem-
9 ber 30, 1982; \$3,520,000,000 for the fiscal year ending Sep-
10 tember 30, 1984; \$3,872,000,000 for the fiscal year ending
11 September 30, 1985; and \$4,259,560,000 for the fiscal year
12 ending September 30, 1986. Any amounts so appropriated
13 shall remain available until expended.”.

14 “(2) Of the amount available under paragraph (1) for
15 each such year, the Secretary shall make available—

16 “(A) 24.5 per centum for grants and loans under
17 section 3(a) of this Act;

18 “(B) 68 per centum for grants under section 3(i)
19 of this Act for urbanized areas with a population of
20 two hundred thousand or more;

21 “(C) 5 per centum for grants under section 3(i) of
22 this Act for urbanized areas with a population under
23 two hundred thousand; and

24 “(D) 2.5 per centum for grants under section 18
25 of this Act.”.

SEC. 103. (a) Section 5 of the Act is amended by adding at the end thereof the following new subsection:

GRANTS FOR RESEARCH AND TRAINING IN URBAN TRANSPORTATION PROBLEMS

(a) by inserting "organizations and" after the word "nonprofit" in the first sentence;

(b) by inserting "or further their" after the word "obtain" in the second sentence; and

(c) by inserting after the third sentence the following new sentence: "In making such grants, the Secretary shall give preference to public and private non-profit organizations having a unique capability of bringing together transit managers and professionals and other individuals representing a broad spectrum of knowledge and expertise in the various technical disci-

1 plines related to urban transportation management and
2 problems.”.

3 AMENDMENTS TO SECTION 12

4 SEC. 105. Section 12(c)(2) of the Act is amended by
5 inserting before the semicolon the following: “and also means
6 a public transit facility which utilizes a fixed catenary system
7 and utilizes a right-of-way of rail usable by other forms of
8 transportation”.

9 AMENDMENTS TO THE REPORTING SYSTEMS

10 SEC. 106. Section 15(b) of the Act is amended by strik-
11 ing out “section 5” and inserting in lieu thereof “section 3(i)
12 or (5)”.

13 AMENDMENTS TO FORMULA GRANTS FOR NONURBANIZED
14 AREAS

15 SEC. 108. (a) Subsection (a) of section 18 of the Act is
16 amended by striking out the first sentence thereof and insert-
17 ing in lieu thereof the following sentence: “To make grants
18 under this section, the Secretary shall apportion for expendi-
19 ture in each fiscal year the sums authorized and appropriated
20 pursuant to section 4(k)(2)(D).”

21 (b) Subsection (c) of section 18 is amended by inserting
22 after the first sentence thereof the following: “After Septem-
23 ber 30, 1982, any amounts remaining unobligated at the end
24 of such period or which are deobligated at the end of such

- 1 period shall be added to the amount available for apportion-
- 2 ment under section 4(k)(2)(D)."

Secretary LEWIS. I think we can point out two or three things that will continue our program from the past. We continue to have a deep commitment to the elimination of operation expenses.

Federal operating assistance covers about 15 to 17 percent of the funds provided for operating deficits across the country, indicating that local and State authorities are presently taking care of about 85 percent.

We feel our role should be on the capital side. We have added a great deal of flexibility to the capital funding under our proposed capital assistance formula program. This formula program accounts for 90 percent of the capital funding proposed under our legislation.

We have eliminated the 13(c) requirements for the new section 9 capital formula program as part of giving greater flexibility to local communities.

Lastly, we have what we think is an adequate program for rural areas under section 21. All in all, having now been involved on this job for about 16 months if I were to make an evaluation of where I see mass transportation, I must say that I continue to have a very deep concern for the deterioration of the capital facilities of mass transit. As you know, I have proposed to the administration and to the Congress that we consider the possibility of a user fee to provide additional revenues for mass transportation and highways.

If this user fee should be approved by the administration and passed by Congress and signed by the President, we will be putting back into mass transportation twice what we are eliminating over the next 3 years in operating subsidies.

We do not lack a commitment to mass transportation, but we do have a grave concern as to whether or not our role should be that of providing operating subsidies inasmuch as we have virtually nothing to say about either the routing, the labor contracts, the maintenance, the service levels, and so forth.

I'm going to cut it off with that and let's open up for any questions you may have.

Senator LUGAR. Do you have any further comment, Mr. Teele?

Mr. TEELE. No, Mr. Chairman, except I'm very pleased that the committee allowed us to testify today, sir.

Senator LUGAR. Mr. Secretary, I have no idea how the deliberations of this committee will go. I have been joined by the distinguished Senator from Illinois, Senator Dixon.

What is the likely fate of this legislation in the event the committee should decide to do something more in the area of operating subsidies? That is going to be a part of our discussion.

There are a number of Senators who have strong feelings about that. Obviously, the administration has some strong feelings about that.

Can you discuss this and really give a fuller idea of what you see the lay of the land as? We talk about the capital funds and operating subsidies this year.

Secretary LEWIS. This is not intended as a threat, nor have I discussed this specifically with the President. But I do know we have strong feelings that if the operating subsidies are adjusted in any way to give increases over those recommended by the Department

of Transportation and the administration, I can virtually assure you that the bill will be vetoed.

ELIMINATION OF 13(C) FROM SECTION 9

There are some tradeoffs. We have talked about the elimination of 13(c) labor provisions. Some of these things could be tradeoffs which will make an adjustment in operating subsidies more palatable.

But the basic position of the administration will be not to support, not emphatically, any bill that provides continuation of operating subsidies beyond the levels recommended by the administration.

Senator LUGAR. Why in the legislation that the Department asked us to submit was 13(c) eliminated from section 9? Is there any particular reason why you decided not to deal with that?

Secretary LEWIS. Because we are eliminating categorical grants. We are giving the local communities the the utmost flexibility in determining how those new formula funds would be spent and therefore, we felt that since we were not picking the specific projects, that they should have the flexibility in terms of the labor requirements on those projects.

Senator LUGAR. In the event as has been suggested in some quarters that 13(c) was eliminated, at least the administration would consider the possibility of some greater flexibility in the operating subsidy area.

Secretary LEWIS. That is conceivable. Again, we are talking in pretty vague generalities in terms of what the tradeoff would be.

We do see an advantage to not having the inhibitions that 13-C gives us in terms of our flexibility.

Senator LUGAR. Senator Dixon, do you have an opening statement or questions to the Secretary of Transportation?

Senator DIXON. I do have an opening statement, Mr. Chairman.

OPENING STATEMENT OF SENATOR DIXON

Mr. Chairman, we are here today to review Federal assistance to public transportation and to hear testimony on how to structure that assistance during the next few years.

As we begin, I think it is important to recognize that the mass transit program has been a success. Since Federal assistance to urban transportation systems began in 1964, public transit service and ridership have greatly increased.

Thousands of new buses and hundreds of new rapid transit cars have been purchased.

The cycle of persistent deterioration in public transportation has been arrested. However, as I am sure most of you here agree, we cannot yet declare a victory and retire from the field.

The financial problems facing the public transportation are still severe. In fact, they are growing and growing rapidly, due in no small part to the economic and budgetary problems facing our economy at all levels of government.

I believe there is a continuing need, therefore, Mr. Chairman, for substantial Federal funding unless we want to return to the pre-1964 era of deterioration, of bankruptcy and of failure.

Meeting these needs at a time when some estimates put the fiscal year 1983 Federal deficit at over \$180 billion will not be easy. However, I think it can be done and that it must be done.

Federal spending in all programs must be restricted; public transportation is no exception. However, it is shortsighted and counter-productive to force the transit programs and other Federal infrastructure programs to bear a disproportionate share of that necessary restraint. Public transit moneys are an investment. The transit programs, the highway program, and other Federal infrastructure programs help provide the foundation that makes economic growth possible. Unless we want to retire our Nation's transit systems, highways, and other infrastructure systems from service, we must provide the funds necessary to operate and maintain them, and where necessary and desirable, for prudent expansion.

Buses and rail cars, and railroads and highways do not stop getting older and worn out because funding is cut. Investments not made now must be made up later, and probably at a much higher cost.

Legislation to extend Federal transit assistance must provide sufficient funding and permit those funds to be used in a flexible way, to insure that the public investment in transportation facilities and service is preserved and not thrown away.

I want to congratulate Senator D'Amato (R-N.Y.) on this bill. I think it represents a good first step in meeting those objectives. There is much in that bill that I can support, and it addresses a number of issues in a reasonable way. I look forward to joining with Senator Lugar, Senator D'Amato, and the other members of the committee in working out a good bill in a bipartisan manner.

I have some thoughts about what constitutes a good bill. First, it must provide a reasonable level of funding. Since mass transit took major cuts in spending last year, I think the burden is on those proposing further disproportionate cuts.

Second, it must continue operating assistance. Without it, many smaller public transportation systems will be forced to either cut service back severely or even to shutdown completely. Although Federal assistance is a small percentage of the operating budgets of large systems, they will be hurt, too.

For example, the CTA in Chicago has already raised fares almost 100 percent in the past 2 years, and simply has no way to replace Federal subsidy moneys. Losing these funds, therefore, would mean less service and further large declines in ridership.

Third, it should help transit systems restrain the growth in their costs, and encourage them to be more productive and efficient.

Given the pressures on the budgets of all levels of government, I think it's imperative that we make sure that all subsidy moneys are spent productively and efficiently.

Fourth, it should simplify and reform the program. Eliminating unnecessary regulatory burdens and simplifying the application and review process will help make the program more efficient, without sacrificing important Federal policy objectives.

I have been working on some proposals to meet these objectives. Shortly after the hearings, I hope to have some specific suggestions to make to the committee.

I look forward to hearing from today's witnesses and those who will testify on Wednesday, and to hearing their ideas and suggestions on the Federal transit program and public transportation issues. As a relative newcomer to this issue, I am particularly anxious to have the benefit of the expertise of the witnesses appearing before the committee.

Mr. Chairman. I thank you for this opportunity. I wonder if the Secretary would be kind enough to permit me to ask several questions?

Secretary LEWIS. Certainly.

REDUCTION IN FUNDING LEVELS

Senator DIXON. As I understand it, the administration's funding level suggests reducing the funding from the \$3.2 billion level for fiscal 1982 to \$2.6 billion in 1983.

Is that correct?

Secretary LEWIS. No, \$2.620 billion.

Senator DIXON. You phase out current operating assistance programs by fiscal 1985. Is that correct?

Secretary LEWIS. That is correct. Over 3 years.

Senator DIXON. Has the administration yet had opportunity to look at the bill introduced by my colleague, the junior Senator from New York, Senator D'Amato?

Secretary LEWIS. Yes, we have.

Senator DIXON. Would you be willing to give me the benefit of your objections concerning his suggestion that we continue to fund at the 1982 level through 1983?

Secretary LEWIS. First, if you compare the bills dollarwise, Mr. D'Amato's bill would have expenditures of approximately \$5½ billion more over the 4 years through 1986, than we are recommending.

Second, he would continue operating expenditures at about the \$1 billion level throughout the life of his bill. As you know, we are phasing them to zero in 1985.

If we are successful with the user fee from both the administration's standpoint and Congress standpoint, we would be satisfied with considerably higher levels of funding than recommended in our bill, but we have no assurance that that will be forthcoming at the present time. This additional revenue would increase our levels to \$4.4 billion, to bring us to \$14 billion compared to his \$15 billion.

At issue more than anything else in his bill is a philosophy that we do not want to continue to support operating subsidies.

I feel very confident, and again this is not to be negative or in any way a threat of a veto, but I can assure you with the funding levels and operating subsidies recommended in Mr. D'Amato's bill, it would not be supported by the administration or signed by the President.

Senator DIXON. It is inherent in your statement that you have a regard for the concept of home rule, the attitude being involved in our transportation programs around the country. May I ask you why you believe it is necessary to statutorily prohibit communities from compounding their block grant fund or new fixed guideway

services or extension of the present guideway services? Isn't this decision best left to the local community?

Secretary LEWIS. On new starts, I believe that they could be considered if additional funds were available. What we have really done in this area, is sort of cut the sails to fit the ship and based on the present, we feel this is the maximum funding level we can have. I reiterate the fact that, as the Secretary of Transportation, I think there is a shortfall and it is a very grave shortfall, particularly in some areas.

For example, in Chicago, there are shortfalls in terms of the capital structure and mass transit. But we have to have a source of funds to provide whatever these needs will be. If we end up with an additional billion dollars annually from the user fee, certainly, in no way would I consider it to be an extravagance to spend that much to improve the infrastructure of mass transportation.

Senator DIXON. You mentioned Chicago. I wanted to get to that shortly.

Secretary LEWIS. I figured that.

EFFECTS OF ENDING FEDERAL OPERATING ASSISTANCE

Senator DIXON. May I get to that now? We'll talk about my beloved city. Chicago has a base fare now of 90 cents, one of the highest, if not the highest, transit fares in the country, I believe. Do you have any studies yet that show the effects of ending Federal operating assistance on this kind of a situation, particularly on transit ridership, services, and the fare levels?

Secretary LEWIS. Actually, we do have some figures on a national basis, which is about 6 cents per year at the fare box. Do you have the specific figures, Art, on Chicago, and the impact? If it was 100 percent fare box, no adjustment in schedules, no other adjustment?

Mr. TEELE. The Secretary makes reference to the fact that if you compute the elimination of section 5, the operating subsidies solely to the fare box, it would equate to approximately 18 cents over 3 years or 6 cents per year—or the equivalent of an increase of 6 cents per year during the 3-year period of the phase-out.

However, we have done a number of studies on fare elasticity and those studies are available to the committee. However, the point that this administration feels most strongly about, is that the off-set of the operating subsidies should not be considered strictly from the fare box, but, rather, together with all the operating subsidies as a function of local political and economic decisions that should be made.

In some cases, it may mean the reconsideration of the routes, the levels and hours of service, so as to reduce those costs. In other cases, it could be a refocusing of the labor contracts. There are other productivity enhancements that could be achieved while not necessarily passing those reductions on to the fare box.

Secretary LEWIS. In answer to the Senator's question, is the 18 cents over the 3 years?

Mr. TEELE. It is 18 cents over 3 years; yes.

Secretary LEWIS. That's the national average.

Senator DIXON. I don't want to belabor this, Mr. Chairman. I see other colleagues here that may have questions as well. I would sug-

gest that the problem with your response is that reducing services is almost totally unacceptable in these major metropolitan areas where these services are needed for individuals who positively depend upon those services to get to and from work. That would be my first objection there.

The second objection, if you're suggesting that the municipality or the State should take up the slack when you cut back at the Federal level, I would suggest to you that the municipality and the State that I represent are already in difficult economic circumstances, much of that an impact of what occurred in the budgetary process last year. When you suggest that they should take up the slack, I would like to point out to you that there ain't no slack.

The only other reasonable alternative I suppose, would be to suggest that we are passing along another tax responsibility to the local or State government and I doubt that that will be all right at the community level.

I would like to suggest once again, that I see a great many things in Senator D'Amato's approach that are appealing to me. I would like for the administration to consider what one of its fine young members has offered as a possible decent alternative to the administration's suggestions here. I see my colleague has now entered the room. I have been examining what he has suggested and find a good deal there that recommends itself to me.

Secretary LEWIS. First of all, it does not have to all be an adjustment to fare box. There is considerable latitude and a great deal of work that has to be done just in terms of productivity itself. One of the reasons I guess I'm mostly in opposition to operating subsidies, is the experience I had in my own home town of Philadelphia where they negotiated a labor settlement last year. If we had the responsibility in the Department of Transportation, we would never have reached the kind of a contract conclusion which they did. We put up 20 percent of the money in Philadelphia, but nobody called us at the Department of Transportation to ask about what we felt was a very unsatisfactory labor negotiation.

We do see the need for increased capital expenditures in mass transportation. One of the reasons we do not want to provide the operating funds is that we know there will not be sufficient capital funds and the systems will continue to deteriorate. You see it in Chicago, New York, Philadelphia, Boston, most of the major cities in the Northeast and Midwest. We think that by stipulating the money has to go to rebuilding the system itself, we'll start improving the infrastructure. Otherwise, the easy way out is to never accept the local responsibility for proper funding and to keep trying to get the dollars coming from Washington by having Congress provide those needs.

Senator DIXON. Have I used up my time?

Senator LUGAR. No.

Senator DIXON. If I can pursue that just for a moment, my recollection of the history of this, my colleague, the Senator from Indiana has been here long enough to remember. I'm sure that the rest of us here have not. But I think it was only about the mid-1970's, around 1974, that they began operating subsidies as well as capital allowances and so forth. But I would argue that you have all the buses and other facilities in the world, and if you can't afford to

run them, it won't do very much good. The service has to be provided for the community. There is a fundamental need there in these major cities in the country.

Secretary LEWIS. If we put up 80 percent of the cost of the bus and 16½ percent comes from State government, then you in the local community can buy a bus for 3½ percent, then you should provide the fuel, the driver, and the maintenance to keep the bus on the road. That's our position. Obviously, we don't agree.

Senator LUGAR. Thank you very much. The Senator from New York has arrived. If Senator Brady would like to proceed with an opening statement or question, I would appreciate it.

Senator BRADY. Thank you, Mr. Chairman. I don't have a statement at this time, other than to say that mass transportation is a critical issue to New Jersey and I'm looking forward to hearing the testimony.

Senator LUGAR. Senator D'Amato, do you have an opening statement or questions?

OPENING STATEMENT OF SENATOR D'AMATO

Senator D'AMATO. Thank you very much, Mr. Chairman. I would like to expound upon the statement made by my colleague from Illinois. With regard to the smaller municipalities in particular which historically have not had a great demand for equipment, it makes little sense to give them the ability to purchase a great quantity of buses when they have a limited need and then cut them off from operating assistance where they have a very real and meaningful need. So I concur with my colleague from Illinois that the elimination of operating subsidies, in essence, can and will do great harm not to New York City per se, not to just the large urban centers, but particularly to our smaller communities.

Local transit properties not only have the need to purchase new rolling stock, but in addition must pay the mechanics to maintain that stock. They must contend with wages and pensions and health costs.

We deprive them and we then heap upon them, the burden of two things, going in many cases to a diminishing tax base, particularly in our older communities where real property taxes are their sole source of funding.

The fare box can sustain a certain level. I would point out to the extent that in the State of Pennsylvania, at least four communities stated if the mass transit operating subsidies were eliminated, they would have to actually consider abandoning or terminating their operation, Harrisburg, Allentown, Scranton, and Lancaster.

How do we correct that deficiency? Isn't there a deficiency in the approach you're taking?

Secretary LEWIS. First of all, I think there is a tremendous need for increased productivity in terms of the labor component of mass transportation which is 65 to 70 percent of the costs depending on the area. Second, we have incorporated one area of maintenance within the recommendation that we are making because spare parts will be treated as capital items. Furthermore, as I indicated to Senator Lugar the other day, we are willing to broaden that

definition if we can come up with some way that is not an artificial means of taking all the overhead and dumping it into a maintenance fund as a device to cover previous operating subsidies. Last, some areas of the country where I have been visiting recently have accepted State and local operating subsidies as a fact of life. Columbus, Ohio, which is not a particularly large city, and others like Atlanta, Houston, and Dallas seem to be accepting this as a fact of life and find they can handle the problem when faced with it. It is easy to say that the loss of Federal operating funds is going to shut down local transit. These systems won't shut down.

Senator D'AMATO. Let me first say, Mr. Chairman, I would like to commend the Secretary for dealing with a most difficult situation given the budget constraints that are placed upon him and in putting forth a very, very difficult proposition in an admirable way. I would not like to change places and have the onus of going forth with what is quite a considerable burden. The idea of saying that these costs go up simply because there is not enough in the way of productivity does not answer, does not go to the heart of the question. By the way, what we do in our bill is suggest that in no event will transit properties be able to use more than 50 percent of their formula grant funds for operating expenses, for those few transit systems that may use in excess of 50 percent, and I think that would be a very small number. In any case, the operating assistance cannot go above the 1982 spending level. So that in terms of the future, it really displays a much lesser degree of dependency upon operating subsidies. I think that is the kind of fair and reasonable compromise which Congress can support. We can say that the President may veto a bill—I don't know if the President will veto the bill simply because it contains an operating subsidy component. I have been a conscientious supporter of this administration wherever and whenever I can. I think about 84 percent of the time and that is pretty good for a Senator from New York. [Laughter.]

But the fact of the matter is that we depart very drastically in this area. I have, Mr. Chairman, several other questions for the record that I would like to submit to the Secretary of Transportation. Let me say by and large, he's done an absolutely outstanding job given the difficulties he faces. I hope there is room for compromise.

TRANSIT RIDERSHIP DECLINE

Secretary LEWIS. Thank you very much, Senator.

Senator LUGAR. Mr. Secretary, as a general proposition, we have taken a look at census figures that indicate that transit ridership has fallen during the decade of the 1970's despite the billions of dollars of Federal, State, and local expenditures. In your overall purview of this situation, why do you believe that this is so? Clearly there was an emphasis by many people involved in transportation at all levels of government and certainly a very concerted Federal input throughout this period of time. But ridership during a time of present occupation with the energy crisis and some severe cutoffs in this country, ridership has continued to fall. Why is this so?

Secretary LEWIS. As you know, we are very strong proponents of user fees in the Department of Transportation. We think that with the exception of Amtrak, and mass transportation, user fees can basically cover all the transportation needs in this area. We will never be able to do it in mass transit or Amtrak in my judgment. The problem goes back to the Federal issue that arose at the time that mass transportation was diverted from the private to the public sector. It was diverted from private to public with no dedicated tax source so the cities fight the county, the cities, and counties fight the States, the more rural areas in the States didn't want to support the cities needs, the New Yorks, Philadelphias, and so forth. So we never came to grips with the problem initially. As a net result, we increased the fares. The ridership dropped because there was a marginal cost there and the commuter was oriented to the automobile. The price of gas went up and the size of cars went down, we still didn't shift to mass transportation as you might anticipate. From my standpoint and the administration's standpoint, we think there is a need for a strong mass transportation system in this country. I guess where we fundamentally disagree with Senators Dixon and D'Amato, is that we think our role should be in building structure, the car barns, the tracks, the cars, the buses. The role of the Federal Government should be in that area and the role of local government should be on the operating side. I guess what I am saying is that we are concerned to see the decrease of ridership as you increase fares. But again, we think the State and local governments should face these needs and properly fund these systems. As long as we are hanging around as part of it and at 14 percent, I don't think there will ever be a viable solution to this problem.

Senator DIXON. Could I pursue what the Secretary just said?

Mr. TEELE. By all means, sir.

Senator DIXON. I wanted to ask you in respect—I believe you and others have been promoting an increase in the gasoline tax of a nickel and earmark a penny of that for mass transportation purposes.

Secretary LEWIS. About a billion one, yes, sir.

Senator DIXON. That would be the yield on the penny?

Secretary LEWIS. Twice what you are losing on operating subsidies over the next few years. That would be about \$4.4 billion to our recommended bill, twice what you would be losing in operating subsidies over the next 3 years. I think—

Senator DIXON. Do you again earmark it for capital investments only, not for operating expenses?

Secretary LEWIS. Yes, with a broader division of maintenance to provide some of the relief, Senator D'Amato is talking about. Frankly, in our bill, mainly because of the pressure of time, we submitted a recommendation on maintenance that included only spare parts. I think we can broaden that definition to accommodate some of the problems you are talking about.

Senator DIXON. Has the administration embraced this as part of its program?

Secretary LEWIS. To date, only the Secretary of Transportation has embraced it. I'm doing the best I can to promote it all over

town. I should say, I'm hanging out there just a little bit on this proposal.

Senator DIXON. It is not yet part of the administration's program?

Secretary LEWIS. No, but it is consistent with the President's philosophy of having the service pay for itself and it is consistent with Federalism. The only way you get that is to turn these programs back to the community. I will say this, whether or not this is part of the present compromise package on the budget, I think ultimately it has to happen, because from a realistic standpoint, as I sit here and as you know, having gone to your own States there is a \$61 billion backlog in bridges. The mass transportation systems are inadequate in terms of the needs of the future. We have to face the problem or we're going to see a geometric deterioration of a very important asset in this area.

Senator DIXON. Thank you, Mr. Secretary.

Senator LUGAR. Mr. Secretary, your legislation establishes a very streamlined application under section IV, but maintains obtrusive planning requirements and Secretary approval for programs and projects. Why did you adopt this?

Secretary LEWIS. In our opinion, we might otherwise have a number of programs proposed without adequate planning. Previously, as you indicated, perhaps in some of the larger programs, 2½ percent would be more than they needed and in other programs, it would be inadequate. If it is inadequate, they can spend more and if it is more than they need, they can file for a waiver.

We are not trying to put more restrictions on the local communities. It is really in there more than anything else, to emphasize the importance of planning. This is not a make-or-break issue as far as either Art or John Fowler or I am concerned, but we do think it is constructive.

Senator LUGAR. If we were to approach this in a block grant situation, why is there a need for this planning intrusion at all?

Secretary LEWIS. Your point is well taken. Again, it was our concern that at least this calls the local community's attention to the importance of planning. Do you want to comment further on that, Art? I think you feel stronger about that than anyone else in the Department.

Mr. TEELE. It primarily conforms with the Highway Department's authorization legislation under which the planning process, of course, is a joint planning process at the local level between the highway and the mass transit elements. As the Secretary pointed out, this provision in the bill provides specifically for waiving or varying the percentage, the 2½ percent being a floor. If it is too much or if the property would like to get less, they can petition the Department for a waiver and will be granted an exception. If they need more, they need not do anything but go ahead and spend the funds.

Secretary LEWIS. If this is particularly objectionable, this is not something we feel that strongly about.

Senator LUGAR. Why do you prohibit the use of new section IX funds for a new subway project? If we do not commit the Federal Government to total cost of the project, why should the Federal Government take that position?

Secretary LEWIS. Because of the availability of the funds. Under our bill, there is inadequate funding for the capital needs. We should complete current projects, assuming they were established with transportation needs in mind, rather than get involved in new starts.

Senator LUGAR. Senator Dixon.

Senator DIXON. Mr. Secretary, this will probably be for one of your aides. I wonder if you could tell us whether it would be feasible for you at sometime in the reasonable foreseeable future, to have computer runs on what the basic grants, the block grants, would mean under the administration's proposal and under Senator D'Amato's proposal?

Secretary LEWIS. Mr. Teele says they are completed and have been provided and we'll see they are submitted to the committee.

Senator DIXON. I would appreciate that, if you could make those available to our office, Mr. Teele.

I would also like to reserve the opportunity to ask some formal questions in writing, subsequent to the hearing, Mr. Chairman.

Senator LUGAR. With that question, I would like to, on behalf of Senator Heinz, request that the Secretary respond to questions in writing. Senator Heinz has prepared some for this hearing (see p. 75).

Secretary LEWIS. I will be pleased to.

Senator LUGAR. Senator D'Amato.

BUY-AMERICAN FEATURE

Senator D'AMATO. I'm wondering if the Secretary can comment on benchmark pricing, which is a new concept put forth in your bill and one that I think, perhaps, is at variance with the overall block grant concept. In addition, I think it might conflict with Congress existing procurement directives of buy-American and life-cycle costing.

Secretary LEWIS. The principal purpose of what we are trying to do here would not change the Buy-American feature. It would still be 50 percent assembled in the United States. What we were trying to do there, is to provide additional flexibility for the local communities. I think the Federal Government should never have gotten involved in bus specifications to begin with. Because of that, we are constantly caught at the Department of Transportation, as to whether a local community wants to buy Grumman buses or GM buses or whatever. By doing this, we propose to give transit authorities additional flexibility to determine what they want to do, rather than have us impose on white book specifications and the like. It is our objective to get out of this area as soon as possible. Is it by December of this year?

Mr. TEELE. October 1.

Secretary LEWIS. We felt that was constructive. Do you find that objectionable?

Senator D'AMATO. We have some problems. Counsel has spoken to my staff today. I wonder if counsel would meet with committee staff on this matter?

Mr. FOWLER. We would be happy to meet with the committee staff and explain the goal of the proposal. It certainly is one that is meant to be less intrusive, not more so.

Secretary LEWIS. If it is more intrusive, we'll eliminate it. In fact, that's where we originally got the idea, from these local communities. In Toledo somebody said why don't you give us a base price and let us do what we want to do? It made a lot of sense to us. That's why it is in the bill.

Senator LUGAR. Senator Brady, do you have further questions for the Secretary?

Senator BRADY. No.

Senator LUGAR. Senator Dixon.

Senator DIXON. No. I thank the Chair.

Senator LUGAR. I thank on behalf of my colleagues, the Secretary of Transportation, and the Administrator of Mass Transit. We appreciate your coming today and providing an excellent statement and being so forthcoming in the questions and answers.

We appreciated especially the spirit with which you approached these hearings. It is controversial legislation, but it is important. You were well prepared for this hearing, obviously filled with good will to work with the committee. I am certain that we are likewise, because we have a fairly short period of time, as you know, before the markup. This is the reason for the urgency of these hearings and others to follow this week.

Thank you for coming.

[The information following was ordered inserted in the record at this point:]

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JOHN DODD, JR., CHAIRMAN
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United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, D.C. 20510

April 27, 1982

Honorable Andrew L. Lewis, Jr.
Secretary of Transportation
Washington, D.C. 20590

Dear Drew,

The enclosed General Accounting Office report entitled "Status of Special Efforts to Meet Transportation Needs of the Elderly and Handicapped" was prepared at our request for a survey of the transit services that are being provided and planned for elderly and handicapped persons under the interim final regulations that you issued last July in implementation of section 504 of the Rehabilitation Act of 1973.

In preparation for the Committee's May 12 meeting to markup legislation reauthorizing the transit program, we would greatly appreciate receiving your analysis of and comments on the GAO report. In particular, we ask that you provide -- in light of the information developed in this report showing substantial reductions in orders for lift-equipped buses and certain inadequacies in paratransit and rail services for handicapped and elderly persons:

1. Your assessment of the extent to which such persons, especially those with mobility impairments, have achieved and will achieve access to transit services comparable to those available to non-handicapped persons.
2. With respect to your Department's role in implementing section 504 of the Rehabilitation Act, section 16 of the Urban Mass Transportation Act of 1964, and section 105 of the Federal-Aid Highway Amendments of 1974, a description of any actions you plan or have under consideration to help ensure that elderly and handicapped persons gain access to such transit services. In this regard, please comment on the GAO finding, on page 2 of the report, that "[o]ther than providing transit system operators copies of the interim rules and informing them of the requirement for submitting the required certification, almost no guidance or assistance has been provided" by your Department, and the statement on page 2 that, as pointed out in the interim regulations, your Department "will investigate only complaints alleging a consistent pattern of failure to make special efforts [to provide transportation that handicapped persons can use]." Please also describe what, if any, additional activities your Department is planning to undertake to monitor and enforce compliance with the above-mentioned provisions of law and regulations thereunder. In addition, please describe, in the event of a complaint of a consistent pattern of failure to meet the special-efforts requirement, what actions your Department will take and what types and levels of "special efforts" your Department will determine to be necessary for transit systems to meet that requirement.

-2-

3. With respect to paratransit services, in light of GAO findings indicating the widespread setting of priorities for service, establishment of waiting lists, outright denial of requests for services, and certain other inadequacies, what specific solutions you propose to address such deficiencies in paratransit systems.

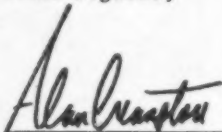
4. In light of GAO findings that representatives of advisory committees and organizations for the handicapped did not agree with the transit systems' assertions as to how well they had coordinated with such groups and that the representatives generally felt that such coordination could be improved, a description of the actions you plan to take to help ensure that elderly and handicapped persons and groups are afforded meaningful opportunities to participate in the planning of transit services generally and of special efforts to meet their needs.

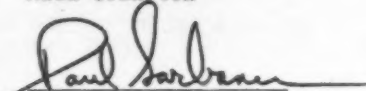
Since the Committee's meeting on the reauthorization legislation is scheduled for May 12, we ask that you provide us with your response to this letter no later than Wednesday, May 5.

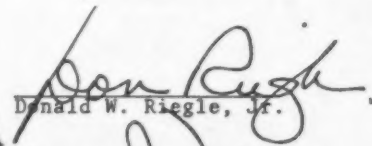
Your cooperation in this matter is greatly appreciated.

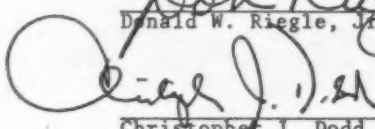
With warm regards,

Cordially,


Alan Cranston


Paul S. Sarbanes


Donald W. Riegle, Jr.


Christopher J. Dodd

Enclosure

cc: Honorable Charles A. Bowsher

EDITOR'S NOTE:--The General Accounting Office report referred to in this letter cannot be printed in this hearing record since it has already been printed at Government expense. The report has been retained in committee files.

Requests for copies of GAO reports should be sent to:
Document Handling and Information Services Facility
P.O. Box 6015
Gaithersburg, Md. 20760



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

MAY 10 1982

The Honorable Alan Cranston
United States Senate
Washington, D.C. 20510

Dear Senator Cranston:

This is in reply to your letter of April 27, cosigned by three other members of the Senate, requesting our analysis of and comments on the General Accounting Office report entitled "Status of Special Efforts to Meet Transportation Needs of the Elderly and Handicapped."

Although we were aware that the report was being prepared, we had not seen a copy of the report until we received the copy you provided. We have not had time since then for a thorough analysis, but our responses to the specific questions raised in your letter are contained in the enclosure to this letter.

As you know, we are still in a rulemaking process on this subject. The comments we have received on the interim final rule have been analyzed. We are currently preparing a Preliminary Regulatory Impact Analysis and a Notice of Proposed Rulemaking, which we expect to issue later this year. We will carefully consider the findings in the GAO report as part of that process.

My objective in the rulemaking process is to develop a regulation that best ensures that the transportation needs of handicapped persons are met without imposing an unreasonable burden on transportation providers or unduly restricting their flexibility to provide those services which are most responsive to local needs. The GAO report should help us to develop a regulation which meets that objective.

I appreciate your interest in this subject.

Sincerely,

A handwritten signature, likely of the Secretary of Transportation, is written in dark ink. The signature is stylized and appears to be 'Drew'.

Enclosure

DEPARTMENT OF TRANSPORTATION
 RESPONSE TO QUESTIONS RAISED BY GAO REPORT:
 "STATUS OF SPECIAL EFFORTS TO MEET TRANSPORTATION
 NEEDS OF THE ELDERLY AND HANDICAPPED"

Below is DOT's response to questions emanating from the GAO report, "Status of Special Efforts to Meet Transportation Needs of the Elderly and Handicapped."

Question: What is your assessment of the extent to which handicapped persons have achieved and will achieve access to transit services comparable to those available to non-handicapped persons?

Answer: The Department issued its interim final rule in July 1981. That rule required that recipients of financial assistance from the Department "certify that special efforts are being made in their service area to provide transportation that handicapped persons, including wheelchair users and semi-ambulatory persons, can use." The rule contained examples of the types of services that recipients might provide, but it did not contain a requirement that the services provided be comparable to those available to non-handicapped persons. Thus we have no data on whether the services being provided under the special efforts requirement are comparable to those available to non-handicapped persons.

Question: With respect to the Department of Transportation's role in implementing section 504 of the Rehabilitation Act, section 16 of the Urban Mass Transportation Act of 1964, and section 105 of the Federal-Aid Highway Amendments of 1974, what actions does the Department plan or have under consideration to help ensure that elderly and handicapped persons gain access to transportation services?

Answer: When the revised requirements for recipients of Federal mass transit funds were issued in July 1981, they were issued as an interim final rule because the public was not given an opportunity for prior comment, and the rule had an immediate effective date in order to provide expeditious relief to regulated parties. At that time, however, the Department indicated the rule would remain in effect only until a new permanent regulation is published. We have reviewed the comments we received on the interim final rule, and we are currently preparing a Preliminary Regulatory Impact Analysis and a Notice of Proposed Rulemaking. The information in the GAO report as well as other information that becomes available to us will be carefully considered in developing the proposed rule. If there are shortcomings in the interim rule, they will be addressed in this process. The proposed rule will be issued for public review and comment, which will be analyzed before development of a final rule. We are confident that the rulemaking process will lead to a final regulation that will ensure that the transportation needs of handicapped persons are met without placing an unreasonable burden on transportation providers or unduly restricting their flexibility to provide services which best meet local needs.

- Question:** Please comment on the GAO finding that "other than providing transit system operators copies of the interim rules and informing them of the requirement for submitting the required certification, almost no guidance or assistance has been provided" by the Department of Transportation.
- Answer:** Our objective in issuing the interim rule was to enable recipients, working with interested individuals and organizations representing handicapped individuals, the flexibility of determining locally the transportation needs of handicapped individuals and the best approaches to responding to those needs. While attempting to preserve that local flexibility, we are preparing guidance for our regional offices to respond to specific inquiries about the interim rule from local transit operators, and we have continued to develop and disseminate technical information on transportation services for the handicapped.
- Question:** Please comment on the GAO finding that the Department of Transportation will investigate only complaints alleging a consistent pattern of failure to make special efforts to provide transportation that handicapped persons can use.
- Answer:** The interim rule requires that recipients certify that special efforts are being made in their service area to provide transportation services that handicapped persons can use. A failure to certify as required or a pattern of failure to carry out special efforts constitutes noncompliance. The interim rule specifies a pattern of failure, rather than an isolated incident, in order to avoid the circumstance that administrative procedures would have to be initiated against a transit recipient because, for example, a lift malfunctioned on a scheduled accessible bus run or a paratransit vehicle failed to arrive as scheduled to pick up a handicapped individual. The "pattern of failure" language is intended to provide reasonable allowance for unavoidable service disruptions; we do not believe it imposes an unreasonable burden of proof on consumers alleging inadequate special efforts.
- Question:** Please describe what, if any, additional activities the Department of Transportation is planning to undertake to monitor and enforce compliance with the above-mentioned provisions of law and regulations thereunder?
- Answer:** Monitoring and enforcement procedures are set forth in Subpart F of the 1973 section 504 regulation (49 CFR Part 27; 44 FR 31481, May 31, 1979). These were not changed by the interim final rule and remain in effect.

Question: Please describe, in the event of a complaint of a consistent pattern of failure to meet the special efforts requirement, what actions the Department of Transportation will take and what types and levels of "special efforts" will the Department determine to be necessary for transit systems to meet that requirement?

Answer: The Department of Transportation will take whatever steps are necessary to assist recipients in an informal manner to comply with the requirements of the interim final rule. However, if that fails and the Department determines that a recipient is in noncompliance with the rule, procedures set forth in Subpart F would be followed.

Several examples of the types and levels of "special efforts" which would be deemed adequate are provided in the appendix to the interim final rule. These are examples, not firm standards, in order to ensure that transit operators have the flexibility to provide a combination of services that best meet local needs and conditions. However, the Department will use those examples as general guidance in determining compliance by transit recipients.

Question: With respect to paratransit services, in light of GAO findings indicating the widespread setting of priorities for service, establishment of waiting lists, outright denial of requests for services, and certain other inadequacies, what specific solutions do you propose to address such deficiencies in paratransit systems?

Answer: The Department is presently preparing a Notice of Proposed Rulemaking leading toward development of a new permanent regulation governing urban transportation services that handicapped persons can use. Reports, such as that by GAO, of deficiencies in existing special services will be considered in development of the NPRM.

Question: What steps does the Department of Transportation plan to take to help ensure that elderly and handicapped persons and groups are afforded meaningful opportunities to participate in the planning of transit services generally and of special efforts to meet their needs?

Answer: This is one of the issues that we are examining in the development of the NPRM currently being prepared. Comments on this subject received in response to the interim final rule and the GAO findings will be considered.

DEPARTMENT OF TRANSPORTATION

QUESTIONS SUBMITTED BY SENATOR GARN

SENATE BANKING COMMITTEE

Senator Garn: Your proposed formula for capital grants would distribute funds based on total non-federal mass transit revenues.

A. Would this formula reward transit systems with high costs or inefficient service, compared to systems that are more efficient?

B. Doesn't such a formula create a bias against newer transit systems, which need funds to expand?

Response: To fully understand the concept behind the Administration's capital allocation formula the entire legislative proposal must be reviewed as a single package. The incentive to operating the most cost efficient system will be driven by the fact that local communities will be totally responsible for the cost of operating their own system. There will be no Federal subsidies. Consequently, cost efficiency -- in terms of service levels, operating costs, etc., -- will be made based on local economic, political and social needs.

Having made a local decision on the extent of revenue or local outlays available to public transit, the Federal Government will use this factor to distribute available capital funding. It's our belief that the local fiscal constraints will provide the leverage to reduce operating costs. We do not believe that capital formula will encourage unnecessary operating costs, merely so that more capital funds can be received.

Concerning your second point, the formula does not necessarily create a bias against newer systems. As systems expand and their non-Federal operating revenues increase, so will their capital allocations. Furthermore, for cities under 200,000 population, the Governor has flexibility to allocate resources in accordance with specific community capital needs. Finally, we have maintained a discretionary fund to provide capital for unusual needs which cannot be accommodated by the formula.

Senator Garn: Your bill is designed to increase the amount of local flexibility in making decisions about transit. Please explain how your proposal would be affected by adoption of the "New Federalism."

Response: We believe our legislative proposal is consistent with the goals of the "New Federalism." Our bill would make a number of significant changes in existing law to provide more flexibility and decision-making at the local level in regard to transit matters. For example, we propose to significantly reduce the existing large discretionary capital program by establishing a new capital formula program that would distribute funds automatically on the basis of a revenue-based formula and allow local decision makers more control over programmatic decisions. We also propose to reduce a number of Federal requirements in existing law and to ease Federal paperwork submissions by distributing capital formula funds in a single grant rather than through the existing project-by-project review. The new Federalism proposals now under discussion would shift even more responsibilities from the Federal to the local level. Although the specific details of this program still are being discussed, we believe the emphasis in our bill on local flexibility and decision-making is a significant step in the direction of the general goals of the New Federalism. The New Federalism would only further extend the principles of local responsibility we have proposed in our bill.

Senator Garn: Why do you propose that the section 5 formula be based partly on 1970 census data? What do 1970 population statistics have to do with 1983 transit needs?

Doesn't this ignore the expanding needs of transit in areas with increasing population?

Response: Section 5(b) of the Administration bill provides for one-half of the funds appropriated under tiers I and II of section 5 of the UMT Act, the two operating assistance tiers determined on the basis of population and population density, to be apportioned and allocated on the basis of the 1970 Federal census and the other half to be allocated and apportioned on the basis of the 1980 Federal census. This parallels a Congressional instruction for tiers I and II in the DOT Appropriation Act, 1982 (P.L. 97-102) for fiscal year 1982 operating assistance funding. Moreover, using both 1970 and 1980 census data assures that, during the phase-out of operating assistance, those systems that for a number of years had been receiving operating assistance on the basis of 1970 census data would not be unduly penalized by the changes in the 1980 census data.

Senator Garn: The Administration proposes no change in the law concerning transit availability for handicapped users. Please explain why you do not believe an amendment is needed.

Response: The Administration has decided that issues concerning transportation for handicapped persons can best be resolved through the regulatory process rather than through the legislative process. On July 20, 1981, the Department published an interim final rule that amended the Department's existing rule implementing Section 504 of the Rehabilitation Act of 1973 (46 FR 37488). This interim final rule requires certain recipients of funds under the Urban Mass Transportation Act of 1964, as amended, (49 U.S.C. §1601 et seq.) to certify that special efforts are being made to provide transportation in their service area that handicapped persons can use. Previously, the Department required these recipients to make their main-line transportation services accessible to handicapped persons. The Department believes that its interim final rule provides localities with the flexibility to design and implement transportation services that best meet the needs of local handicapped persons.

The Department provided a 60-day public comment period on the interim final rule. We are evaluating those comments now as we prepare a new notice of proposed rulemaking (NPRM) on this topic. We plan to issue the NPRM this fall. The Department will provide a public comment period on the NPRM and will take those comments into consideration when preparing the subsequent final rule.

Senator Garn: Your bill proposes cumulative authorizations for research and development of \$237,600,000 by 1986. Please provide for the record;

a. An explanation of why you propose that the authorizations should be cumulative;

b. Detailed explanation of what research and development projects you expect to fund out of this authorization; and

c. Your assessment of the impact of a \$25 million per year reduction in the proposed authorization levels.

Response: a. We proposed a cumulative authorization for the research and development program in order to provide flexibility in appropriations requests during the authorization period. Spending for research and development may not fit squarely within one fiscal year. A cumulative authorization allows the "carryover" of unused authority to later years. The overall authorization levels are fixed but cumulative authorization allows greater flexibility to appropriate money only when it is actually needed to incur obligations. The cumulative authorization permits this flexibility on the part of the Executive in making budget requests, and on the part of the Congress in enacting appropriations.

b. Under this program, the Department undertakes research, development, and demonstration projects to improve mass transportation service, to contribute towards meeting total urban transportation needs at minimum cost, and to assist in the reduction of unmet urban transportation needs. This authorization also provides managerial training to increase the performance capabilities of managerial, technical, professional, and supervisory personnel in the mass transit industry and related public sector areas. The authorization includes a University Research program to utilize and strengthen the capabilities of the academic community to make a significant contribution to easing the problems of the transit community.

In Fiscal Year 1983, the \$45 million appropriation request is distributed with about 2/3 of the funds going toward training, planning, services, and management techniques, and 1/3 toward hardware subsystems development:

University Research and Training	\$ 2,000,000
Management Training	1,500,000
Policy and Program Development	1,500,000
Safety and Product Qualification	3,500,000
National Cooperative Transit Research	1,900,000
Management Techniques Research	5,000,000
Planning Methods Development	5,000,000
Service and Methods Demonstrations	9,500,000
New Technology	100,000
Rail Subsystems Technology	8,000,000
Bus Subsystems Technology	<u>7,000,000</u>
<u>Total</u>	\$ 45,000,000

Our research and training activities will be directed toward improving the capacity and ability of the transit operating industry to provide and maintain safe, reliable and efficient transportation, with a greater involvement of the private sector.

In the short run, UMTA's mission can be fulfilled by merely channeling Federal grant funds to appropriate public bodies which in turn can use those funds to provide transportation services using traditional techniques and methods and to purchase off-the-shelf equipment and facilities. In the longer run, however, to enhance the efficiency, effectiveness, and productivity of transit services and equipment, transit managers should have access to innovative service concepts, techniques, and technologies for operating and managing transit enterprises. They must also have information that will contribute to improved decision-making at the Federal, state and local levels, regarding the planning, construction, equipping, maintaining, and financing of transit systems.

Consequently, our research and training activities will concentrate on developing and assisting local transit entities in finding practical solutions to current transportation problems and those which are eminent in the near future. The Department will:

- Implement research, development and demonstration, activities to improve mass transit facilities, equipment, operating and management techniques and services.
- Sponsor the evaluation and improvement of transit construction and operations using the mechanism of peer reviews by teams of transit professionals.
- Encourage and assist local authorities and transit decision-makers to establish processes and procedures to improve transit safety through conducting safety research, reviews, information dissemination and direct technical assistance.
- Assist the transit industry in improving the expertise and capability of its professional staff to plan, manage and operate their systems more effectively through university research and training programs, and managerial training activities.
- Encourage domestic industry to develop, test and market innovations in transit technology that promised benefits such as reduced life-cycle costs, improved productivity of conventional transit, and support for national priorities.
- Develop hardware and software related technical assistance to State and local governments and transit authorities. This will assist the State and locals in making better decisions concerning planning, equipping, operating and financing public transportation.

- Increase information sharing activities.

c. This technical assistance is a critical counterpart to the Administration's proposal to eliminate Federal operating assistance, in that it provides the mechanisms which can assist localities in improving their operations while reducing their operating costs. The proposed authorization of \$237,600,000 which averages \$47 million per year would be about half of current annual authorization levels. Consequently, a \$25 million per year reduction in the proposed authorization levels would have severe consequences for the program.

Senator Garn: Please provide for the record figures showing, by State, the annual grants made under Section 18 of the Urban Mass Transportation Act, as well as the status of any pending grant applications.

Response: The attached tables show the amounts available to each State, the amount obligated and the total unobligated balance at the end of the fiscal year for FY 1979, 1980, 1981, and as of February 28, 1982. The unobligated balances as of February 28, 1982 are available for applications, which are in various stages of development. The obligation rate has been increasing and was approximately \$6 million per month for FY 1981.

[illegible]

AS OF SEPTEMBER 30, 1991

6 80109584-091

OBLIGATIONS

STATE	TOTAL MAILS DEL.	PER F. Y. 80	P. V. 81 -20 MAIL	TOTAL	PERCENTAGE DEL. 81/80
ALABAMA	9,963,153.00	316,747.00	967,151.00	986,499.23	9,969,698.00
ALASKA	4,274,394.00	142,744.00	217,928.00	360,160.23	3,857,060.00
ARIZONA	1,699,573.00	112,004.00	186,157.00	286,673.00	1,412,900.00
ARKANSAS	5,234,340.00	217,287.50	1,811,371.00	2,099,319.00	3,435,020.00
CALIFORNIA	10,116,744.00	1,336,749.20	4,401,798.00	9,710,534.03	9,406,210.00
COLORADO	2,180,440.00	250,989.00	1,111,862.00	1,363,247.52	907,193.00
CONNECTICUT	2,182,212.00	259,793.20	235,343.00	4,734,276.00	1,707,476.00
DELAWARE	947,106.00	20,900.00	129,343.00	140,343.00	406,763.00
FLORIDA	9,667,987.00	1,649,132.30	2,566,438.03	9,894,770.00	2,013,717.00
GEORGIA	7,449,020.00	1,791,652.00	4,304,996.00	9,760,406.00	1,709,412.00
HAWAII	903,001.00	176,990.30	147,793.00	817,973.20	984,184.00
IDaho	1,731,031.00	91,223.30	777,053.04	1,693,879.24	37,152.00
ILLINOIS	9,667,987.00	1,339,326.30	1,129,762.00	2,669,089.00	6,194,794.00
INDIANA	7,707,257.00	2,588,516.00	1,312,970.00	9,771,036.20	1,046,721.00
IOWA	4,949,278.00	1,402,773.00	3,462,721.00	4,812,994.98	914,303.14
KANSAS	4,039,278.00	739,960.00	553,968.17	95,968.17	3,467,468.84
KENTUCKY	5,739,369.00	2,111,017.00	2,178,388.00	4,689,599.00	1,299,771.00
LOUISIANA	4,126,234.00	247,128.00	2,107,211.00	1,954,339.00	3,771,904.00
MAINE	2,266,071.00	767,792.00	809,422.10	1,661,660.70	604,416.00
MARYLAND	3,667,708.00	2,374,533.20	1,227,000.30	3,622,641.54	49,700.00
MASSACHUSETTS	3,726,520.00	1,071,345.00	1,176,770.00	9,844,823.30	603,007.00
MICHIGAN	6,644,159.00	2,326,125.00	3,136,938.00	9,067,641.00	1,464.00
MINNESOTA	3,066,635.00	1,311,340.00	2,131,136.00	2,876,466.20	2,717,979.00
MISSISSIPPI	5,146,157.00	1,66,806.20	1,275,488.00	1,484,664.00	3,662,494.00
MISSOURI	9,783,540.00	1,039,672.00	2,036,110.37	9,274,782.92	2,789,747.60
MONTANA	1,522,059.00	922,357.50	1,011,014.37	1,954,339.00	1,464,000.00
NEBRASKA	2,261,630.00	1,459,234.75	762,915.94	2,221,150.47	300,679.34
NEVADA	410,624.00	43,141.00	118,665.00	153,966.00	730,016.00
NEW HAMPSHIRE	1,594,335.00	279,940.19	207,927.43	2,067,409.51	1,060,041.00
NEW JERSEY	2,997,334.00	936,681.17	910,409.99	1,367,391.15	1,649,007.00
NEW MEXICO	1,981,194.00	676,998.50	719,603.35	1,196,601.85	786,587.14
NEW YORK	10,461,209.00	584,650.00	2,314,374.00	2,099,179.00	7,562,030.00
NORTH CAROLINA	10,235,741.00	4,903,173.00	4,303,293.00	4,276,464.00	999,773.00
NORTH DAKOTA	1,586,061.00	1,070,047.00	885,714.00	1,556,061.00	1,000,000.00
OHIO	11,190,008.00	2,325,222.40	2,159,396.97	4,460,619.20	6,663,000.00
OKLAHOMA	4,159,669.00	751,372.77	126,746.00	577,617.93	3,776,951.07
OREGON	3,045,697.00	1,671,685.00	906,816.00	2,877,303.00	773,394.00
PENNSYLVANIA	13,247,990.00	3,656,621.06	3,375,819.00	7,082,000.00	6,165,990.00
RHODE ISLAND	543,916.00	27,891.00	21,701.20	77,701.20	576,215.00
SOUTH CAROLINA	9,143,939.00	2,730,325.30	1,836,191.19	4,774,516.19	616,976.00
SOUTH DAKOTA	1,677,482.00	889,658.30	1,129,980.07	1,627,739.07	743,455
VERMONT	6,401,053.00	2,940,662.00	2,993,134.44	2,139,616.44	1

U. S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
STATUS OF FUNDS APPORTIONED FOR SECTION 10 UNITS
REORGANIZED TRANSPORTATION PROGRAM COMBINED - BY STATE (FIS/77/77)

FIS-1100-12000

AL BY FISCAL YEAR 1977

1/2/1978-781

STATE	TOTAL AVAILABLE	YTD P. V. 61	P. V. 62 BALANCE	TOTAL	UNEXPENDED BALANCE
ALABAMA	7,999,731.00	884,473.00	777,474.00	3,000,000.00	6,000,000.00
ALASKA	699,997.00	300,000.00	300,000.00	300,000.00	300,000.00
ARIZONA	2,754,174.00	404,000.00	70,000.00	3,000,000.00	3,000,000.00
ARKANSAS	5,544,000.00	2,000,000.00	2,000,000.00	2,000,000.00	3,500,000.00
CALIFORNIA	33,100,000.00	9,710,000.00	8,000,000.00	1,777,000.00	3,000,000.00
COLORADO	2,012,010.00	1,042,047.00	300,000.00	1,000,000.00	1,000,000.00
CONNECTICUT	2,007,000.00	0,700,000.00	100,000.00	300,000.00	1,700,000.00
DELAWARE	714,750.00	100,000.00	100,000.00	100,000.00	600,000.00
FLORIDA	7,004,000.00	2,004,000.00	100,000.00	1,000,000.00	2,000,000.00
GEORGIA	2,007,000.00	2,000,000.00	2,000,000.00	2,000,000.00	2,000,000.00
HAWAII	2,147,720.00	217,000.00	100,000.00	100,000.00	2,000,000.00
IDAHO	2,270,120.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
ILLINOIS	11,104,750.00	2,000,000.00	900,000.00	3,000,000.00	2,000,000.00
INDIANA	9,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	2,000,000.00
IOWA	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
KANSAS	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
KENTUCKY	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
LOUISIANA	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
MAINE	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
MARYLAND	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
MASSACHUSETTS	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
MICHIGAN	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
MINNESOTA	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
MISSISSIPPI	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
MISSOURI	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
MONTANA	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
NEBRASKA	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
NEVADA	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
NEW HAMPSHIRE	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
NEW JERSEY	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
NEW MEXICO	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
NEW YORK	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
NORTH CAROLINA	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
NORTH DAKOTA	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
OHIO	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
OKLAHOMA	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
OREGON	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
PENNSYLVANIA	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
RHODE ISLAND	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
SOUTH CAROLINA	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
SOUTH DAKOTA	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
TENNESSEE	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
TEXAS	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
UTAH	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
VERMONT	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
VIRGINIA	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
WASHINGTON	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
WEST VIRGINIA	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
WISCONSIN	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
WYOMING	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
DIST. OF COL.	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
Puerto Rico	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
SUBTOTAL	200,000,000.00	100,000,000.00	100,000,000.00	100,000,000.00	100,000,000.00
AMERICAN SAMOA	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
GUAM	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
N. MARIANA	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
VIRGIN ISLANDS	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
TOTAL	204,000,000.00	104,000,000.00	104,000,000.00	104,000,000.00	104,000,000.00

QUESTIONS SUBMITTED by SENATOR HEINZ
SENATE BANKING COMMITTEE

Senator Heinz: (a) What is the rationale for eliminating operating assistance?

(b) What will UMTA or DOT do when a transit system ceases operation because of the phase-out of Section 5?

(c) It is likely that you will be flooding small and medium sized cities with more capital than they have historically consumed. This fact, plus the elimination of operating assistance, will serve to encourage people to capitalize their maintenance expenses. What thought have you given to this?

(d) I am also concerned about your proposed "Revenue Match" for allocating the block grant funds. It seems to me to be strange that you are proposing to apportion capital dollars on the basis of non-capital local outlays. Also, there is the obvious potential that some localities will not pursue any cost efficiencies because this form of allocation will only serve to encourage greater local operating outlays to leverage more capital funding. Please comment on these two points, if you would.

RESPONSE: (a) Inflation has been a major cause of escalating transit costs and deficits. It is important to view the phase out of Federal operating assistance as part of an overall Administration program to improve the economy and reduce the rate of general inflation by:

- restraining Federal spending,
- reducing the burden of Federal regulations and reducing Federal intrusion into local decisions, and
- returning the responsibility for controlling and financing local governmental activities to the local level.

It is against this background that the Administration views the transit industry and sees a pattern of rising transit costs and deficits, declining productivity and declining fare levels in real terms. These trends are strongly associated with Federal operating assistance itself (See 1981 attached GAO Report titled "Soaring Deficits Must be Controlled," and 1979 UMTA Report titled "Operating Assistance for Transit, An Evaluation of the Section 5 Program"). Indeed low fares and expanded service are goals of the Section 5 program expressed in the legislation and its implementing regulations. Low fares necessarily imply high operating deficits to be funded by all levels of government; and expanding service into less densely populated areas has had the effect of reducing productivity and increasing unit operating costs. In other words, Federal subsidies have had the effect of widening the gap between revenues and costs and increasing the demand for future operating subsidies--in a self-reinforcing cycle.

To break this cycle, the GAO report ("Soaring Transit Subsidies Must be Controlled") recommended that various "strings" be attached to Federal assistance and, in effect, that a Federal fare policy be adopted. For example, GAO recommended that the Secretary of Transportation direct the UMTA Administrator to:

"Develop and undertake specific actions to improve transit productivity." These actions could include:

Requiring management evaluations for all systems of a certain size receiving Federal funds, and

Requiring UMTA regional offices to monitor transit systems' responses to recommendations in management evaluations and consider the findings of such studies when evaluating requests for Federal funds.

GAO also recommended that:

The Congress reconsider the 1974 legislative finding that the continued increase in fares is undesirable and adopt a goal for the Federal subsidy program that promotes efficient and equitable transit pricing.

and that the Secretary of Transportation:

Direct the UMTA Administrator to develop and issue policy guidelines encouraging local areas to (1) recover more of their costs from passenger fares and (2) develop realistic, efficient, and equitable local fare policies and structures.

However, it is unlikely that these actions--intrusive as they are--would be sufficient to improve productivity, control costs, raise fares and thus reduce the demand for transit subsidies. To really control these factors would require detailed oversight of service, fare, and financing decisions. This would involve such heavy Federal intrusion into local transit decisions as to essentially constitute Federal operation of local transit systems. The Administration opposes such an approach on both philosophical and practical grounds.

We agree completely with GAO that "the primary responsibility for improving transit productivity rests with local transit systems and State and local governments" and that "...the primary responsibility for developing realistic, efficient, and equitable fare policies rests with local transit systems and state and local governments." Accordingly, the Department has proposed a gradual phase-out of Federal operating subsidies. By 1985 Federal operating subsidies and the "strings" attached to these subsidies would end. The Federal government would become neutral with regard to local fares, and the responsibility for financing local transit operations would become a local responsibility.

(b) First, we do not anticipate that many systems will cease operations entirely because of the phase out of Section 5 operating assistance. We believe that the majority of systems will be able to cope with the loss of Federal assistance by a combination of:

- increased fares,
- eliminating unproductive routes and services,
- increasing State and local financial assistance, particularly dedicated revenue sources which will provide greater funding stability,
- increased reliance on the provision of transit service by the private sector, and
- adopting various management actions to control operating costs.

UMTA is willing and ready to assist any locality which desires planning or technical assistance to identify means of reducing operating costs, increasing operating revenues, restructuring routes and fares, and identifying alternative financial mechanisms for public support of service. We hope that localities would seek such assistance before they give serious consideration to ceasing operations; if not, such assistance would still be available to plan a restoration of service. UMTA has already provided such assistance to Birmingham and Youngstown.

Secondly, if maintenance of public transportation service is not a priority concern of a locality and it chooses to have its service end, we do not see the preservation of such service as a matter warranting anything beyond a capital subsidy, which on its own is a substantial subsidy.

(c) Limiting the Federal role to capital assistance does entail some risk that localities may not adequately maintain their capital equipment and may use the available capital assistance funds to compensate for this poor maintenance by replacing equipment earlier than would otherwise be necessary. To protect against this risk the proposed legislation includes a requirement that the recipient of capital assistance certify that equipment is being maintained adequately. We do not believe that the authorization levels being proposed, in combination with an allocation formula that is sensitive to service provided, would "flood" any localities with more funds than are needed to meet legitimate capital requirements without overcapitalization.

(d) The Department's capital formula allocation is based upon Federal non-capital local revenues or outlays. This factor measures the extent or size of the local transit system; system ridership; differential costs of system operation; and the degree to which local communities are committed to the operation of their system. We have limited this factor to non-capital revenues since capital expenditures tend to vary greatly in any particular year. Operating revenues tend to remain more consistent on a year-to-year basis.

To fully understand the concept behind the Administration's capital allocation formula, the entire legislative proposal must be reviewed as a single package. The incentive to operating the most cost efficient system will be driven by the fact that local communities will be totally responsible for the cost of operating their own system. There will be no Federal subsidies. Consequently, cost efficiency -- in terms of service levels, operating costs, etc., -- will be made based on local economic, political and social needs.

Having made a local decision on the extent of revenue or local outlays available to public transit, the Federal Government will use this factor to distribute available capital funding. It's our contention that the local fiscal constraints will provide the leverage to reduce operating costs. We do not believe that capital formula will encourage unnecessary operating costs, merely so that more capital funds can be received.

Senator Heinz: Your legislative proposal sets aside 10% of the total authorization for all but Section 5, or \$186 million for FY 1983. According to earlier budget submissions you have already incurred legal obligations through letters of intent totalling \$119 million for FY 83. You also have indicated that continuation of the 16(b)(2) program, which would mean an outlay of as much as \$31 million. Lastly, in order to fund the Section 18 program, it has been proposed that you would use \$43 million in carryover from the 1982 Section 18 program, and add \$32 million from the discretionary program. This leaves a total potential discretionary program of \$3 million. Is this your intention? How will you address truly discretionary, extraordinary capital needs in FY 1983?

RESPONSE: No, our proposed authorizations do provide for use of discretionary funding for extraordinary capital needs or specific needs that cannot be adequately handled under the formula program.

First, we intend to honor our letter of intent commitments by use of capital formula Section 9 funds.

Second, the Section 18 program would not drain funds from the discretionary program because a separate authorization is provided for Section 18 and the new capital formula program for non-urbanized areas (Section 21). This authorization would be split between Sections 18 and 21 in a way that phases out the Section 18 operating subsidy program in the same proportions and on the same schedule as the phase out of Section 5 for urbanized areas.

The following table summarizes the funding schedule for Sections 18 and 21 reflected in our legislative proposal.

Funding Schedules for Section 18 and 21

	FY82 Approps	Legislative Proposal			
		FY83	FY84	FY85	FY86
Section 18	68.5	42.5	18.5	-0-	-0-
Section 21	-0-	32.5	56.5	75.0	75.0

This table reflects new budget authority and does not include available Section 18 FY 82 end-of-year carryover of approximately \$78 million.

Third, the 16(b)(2) program would be funded out of the Section 3 discretionary program, but this would still leave a sizable discretionary resource available.

Senator Heinz: Would you please address yourself to the issue of how benchmark pricing would function, and the status of existing procurement directives, including "Buy America" and life-cycle costing.

Response: Section 8 of the DOT bill adds a new section 12(b)(3) to the UMT Act authorizing the Secretary of Transportation to establish a "benchmark price" which would set the maximum amount of Federal participation in the acquisition of buses by UMTA grantees. The establishment of this price would provide grantees with an alternative means of procuring buses with Federal funds. This provision does not mandate that any transit authority utilize the benchmark pricing method in procuring buses--it simply establishes a new system that is available at the election of the grantee.

If a transit authority elects to use benchmark pricing, it must still certify to the Secretary that it has a competitive procurement system. Once this election and certification occur, then the transit authority can buy buses with Federal funds without being bound by Federal procurement requirements such as OMB Circular A-102 and life-cycle costing. (This does not mean that a grantee would be precluded from using life-cycle costing; but only that life-cycle costing would not be a federally imposed requirement.) With regard to Buy America provisions, Secretary Lewis recently testified before the Senate Banking Committee that Buy America would apply to the benchmark price proposal.

The setting of a benchmark price by the Secretary does not mean that DOT will be designing a "benchmark bus", with federally designated components, and then administratively determining the price of that bus. We see the benchmark price as being simply a reflection of bus market prices during the immediately preceding time period. For example, if the Secretary decides to specify the benchmark price for a particular type of bus at the beginning of the fiscal year, it would be based on the average sales price in a preceding period. The Federal contribution would then be set at 75 percent of that average price. If there has been a time lag due to slow sales movement of particular types of buses, it might be necessary to apply some type of indexed inflator or deflator to the average sales price. Finally, since there are several types of buses in operation today (i.e., advanced design buses, new looks, articulated buses, etc.), the Secretary would probably establish a benchmark price for each particular type of bus.

Thus, the only factor that we envision being involved in setting the benchmark price is the average sales price for a particular type of bus during a particular period. That factor would be determined by the market.

U. S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

P825059-932

STATUS OF FUNDS APPROPRIATED FOR
UNTA SEC. 10 NON-URBANIZED TRANSPORTATION PROGRAM - APPN 001/002

OCT 16 1978

AS OF SEPTEMBER 30, 1979

STATE	TOTAL AVAILABLE	DISBURSEMENTS		TOTAL	UNOBLIGATED BALANCE
		THRU P. Y. 1978	P. Y. 1979 TD DATE		
ALABAMA	2,120,750.00		319,942.00	319,942.00	1,800,808.00
ALASKA	170,250.00				170,250.00
ARIZONA	540,075.00		70,050.00	70,050.00	470,025.00
ARKANSAS	1,373,175.00		45,000.00	45,000.00	1,328,175.00
CALIFORNIA	3,250,075.00				3,250,075.00
COLORADO	880,075.00		25,000.00	25,000.00	855,075.00
CONNECTICUT	703,950.00				703,950.00
DELAWARE	170,475.00		20,000.00	20,000.00	150,475.00
FLORIDA	1,023,325.00		273,498.00	273,498.00	749,827.00
GEORGIA	2,400,325.00		210,000.00	210,000.00	2,190,325.00
HAWAII	291,300.00		43,090.00	43,090.00	247,210.00
IDaho	350,375.00		83,750.00	83,750.00	266,625.00
ILLINOIS	2,700,100.00				2,700,100.00
INDIANA	2,400,100.00		601,695.00	601,695.00	1,798,405.00
Iowa	1,750,625.00		163,937.00	163,937.00	1,586,688.00
KANSAS	1,292,400.00		80,000.00	80,000.00	1,212,400.00
KENTUCKY	1,845,300.00		632,054.00	632,054.00	1,213,246.00
LOUISIANA	1,047,525.00		247,128.00	247,128.00	799,397.00
MAINE	730,050.00		109,642.00	109,642.00	620,408.00
MARYLAND	1,177,000.00		400,000.00	400,000.00	777,000.00
MASSACHUSETTS	1,197,075.00		179,051.00	179,051.00	1,018,024.00
MICHIGAN	2,702,350.00		371,434.00	371,434.00	2,330,916.00
MINNESOTA	1,030,075.00				1,030,075.00
MISSISSIPPI	1,040,175.00				1,040,175.00
MISSOURI	1,059,350.00		180,450.00	180,450.00	878,900.00
MONTANA	401,250.00				401,250.00
NEBRASKA	700,000.00		173,301.51	173,301.51	526,698.49
NEVADA	134,425.00				134,425.00
NEW HAMPSHIRE	501,375.00		16,750.00	16,750.00	484,625.00
NEW JERSEY	561,800.00		144,270.00	144,270.00	417,530.00
NEW MEXICO	639,075.00		95,001.00	95,001.00	544,074.00
NEW YORK	3,369,525.00		250,000.00	250,000.00	3,119,525.00
NORTH CAROLINA	3,240,775.00		83,329.00	83,329.00	3,157,446.00
NORTH DAKOTA	301,075.00		75,294.00	75,294.00	225,781.00
OHIO	3,552,450.00		521,903.00	521,903.00	3,030,547.00
OKLAHOMA	1,334,525.00				1,334,525.00
OREGON	440,000.00		44,300.00	44,300.00	395,700.00
PENNSYLVANIA	6,267,425.00		453,454.00	453,454.00	5,813,971.00
RHODE ISLAND	191,075.00				191,075.00
SOUTH CAROLINA	1,003,450.00		160,750.00	160,750.00	842,700.00
SOUTH DAKOTA	515,000.00		78,750.00	78,750.00	436,250.00
TENNESSEE	2,000,025.00		50,200.00	50,200.00	1,949,825.00
TEXAS	3,733,275.00		300,000.00	300,000.00	3,433,275.00
UTAH	240,025.00		43,503.00	43,503.00	196,522.00
VERMONT	275,550.00		395,550.00	395,550.00	
VIRGINIA	1,991,400.00		298,710.00	298,710.00	1,692,690.00
WASHINGTON	1,237,500.00		183,625.00	183,625.00	1,053,875.00
WEST VIRGINIA	1,189,500.00				1,189,500.00
WISCONSIN	2,003,000.00				2,003,000.00
WYOMING	245,450.00		44,319.00	44,319.00	201,131.00
DIST. OF COL.					
Puerto Rico	1,440,450.00		210,007.00	210,007.00	1,230,443.00
SUBTOTAL	74,890,125.00		7,910,450.67	7,910,450.67	66,979,674.33
AMERICAN SAMOA	24,150.00				24,150.00
GUAM	75,400.00		11,340.00	11,340.00	64,060.00
N. MARIANA	8,500.00		1,282.00	1,282.00	7,218.00
VIRGIN ISLANDS	59,575.00				59,575.00
SUBTOTAL	168,625.00		12,622.00	12,622.00	156,003.00
TOTAL	75,058,750.00		7,923,072.67	7,923,072.67	67,135,677.33

Senator LUGAR. The Chair would like to call a panel of three witnesses, Gregory J. Ahart, Director, Human Resources Division, General Accounting Office, Washington, D.C.; Mr. John Houston, Director of Congressional Affairs, Public Service Research Council, Vienna, Va.; and Mr. William Lindner, president, Transport Workers Union of America, New York City.

If you could summarize your initial testimony in 10 minutes of time, that would be helpful.

Mr. Ahart.

STATEMENTS OF GREGORY J. AHART, DIRECTOR, HUMAN RESOURCES DIVISION, GENERAL ACCOUNTING OFFICE, JOHN HOUSTON, DIRECTOR OF CONGRESSIONAL AFFAIRS, PUBLIC SERVICE RESEARCH COUNCIL, VIENNA, VA.; AND WILLIAM LINDNER, PRESIDENT, TRANSPORT WORKERS UNION OF AMERICA

SECTION 13 (C)

Mr. AHART. Mr. Chairman. We are pleased to appear here today to report the results of our work, requested jointly by you and Senators William Armstrong, Jake Garn, Don Nickles, Dan Quayle, and John Tower, to obtain information on the Department of Labor's administration under section 13(c) of the Urban Mass Transportation Act of 1964. As you know, section 13(c) of the act provides that before any assistance is granted, under the act, fair and equitable arrangements be made to protect the interests of employees affected by such assistance.

Before a request for assistance is approved, the Department of Labor must certify the employee protective arrangements. Section 13(c) was included in the Urban Mass Transportation Act to protect transit employees who lost benefits and rights as a result of the public takeover of major transit firms. The legislative history of section 13(c) shows that the congressional intent was to preserve and continue the existing rights, privileges and benefits of the employees. It does not show any intent that the section 13(c) would operate to improve the transit employees benefits or the labor unions' position.

The short time frame and early need for the results of our work did not permit us to use techniques which would assure representativeness in selecting transit authorities and projects for review. Instead, we concentrated our work at 12 transit authorities. Most of them were reputed to have had problems in negotiating section 13(c) agreements.

At the 12 authorities, we focused our work in gathering information on whether section 13(c) resulted in additional employee protection benefits and increased costs for the transit systems. I should mention that throughout the history of section 13(c) during which the employee protection agreements have evolved from simple documents containing warranty paragraph in the early years to agreements numbering many pages containing numerous provisions—the policy of the Labor-Management Services Administration in the Department of Labor has been one of somewhat limited involvement.

Since inception of the section 13(c) program its role essentially was to evaluate the sufficiency of terms agreed upon by transit authorities and unions and to render determinations with respect to matters on which the parties found themselves in disagreement. The Secretary of Labor has exercised his authority to establish the terms of a section 13(c) agreement sparingly.

Some transit authorities believe that the Labor Management Services Administration's policy has contributed to their section 13(c) problems. According to some transit authorities, the need to reach agreement as a condition precedent to receiving financial assistance tends to place pressure on authorities to agree to union demands.

Probably the most important finding that we make, Mr. Chairman, involves the inclusion of interest arbitration provisions in section 13(c) agreements.

At least 6 of the 12 transit authorities—there are a couple that have provisions contingent upon some happening of some future event—we found that the section 13(c) agreements included the right for either party to invoke interest arbitration, which did not exist in previous collective bargaining agreements.

An example of this is the Nashville Metropolitan Transit Authority which was created in 1963, and which in 1973 took over operation of the transit system. It contracted with a management services company to manage the transit system, which in turn, formed a subsidiary corporation to employ all employees necessary for the transit system's operation.

This left the employees private sector employees, as opposed to public sector employees. These employees had been represented by the Amalgamated Transit Workers [ATW] local 1235 since 1940.

UMTA has provided Nashville about \$26 million in Federal grants. As a condition for receiving the grants, the mayor of the metropolitan government of Nashville-Davidson County and a local 1235 representative executed section 13(c) employee protection agreements in 1963 and twice in 1975. All three agreements contained similar provisions allowing either party to invoke interest arbitration to settle disputes.

The local union's previous collective bargaining agreement with the authority and its predecessor, the Nashville Transit Authority, did not contain such a right. Following the regular contract's expiration in May 1979 and the failure to resolve contract bargaining impasses, the union invoked the interest arbitration provision of the section 13(c) agreement.

The company and the authority, however, refused to arbitrate. The company's general manager said he adamantly resisted submitting the terms of the new collective bargaining agreement to arbitration because, among other reasons, local 1235 had never won the right to demand interest arbitration through collective bargaining and the company had no intention of conceding the right.

In August 1979, on the basis of the union's complaint, a U.S. District Court ordered the authority to enter into binding interest arbitration in accordance with provisions of the section 13(c) agreement.

According to company officials, local 1235 members made significant gains through the interest arbitration apparatus. Company of-

ficials do not dispute that the section 13(c) agreements provide for arbitration. They believe, however, that the agreements were supposed to protect employees' rights, privileges, and benefits. They did not anticipate that evolving Federal interpretation would permit local 1235 employees to obtain rights which the union had not previously bargained for.

Another finding involves contracting out by transit authorities. At five authorities, we found that some of the section 13(c) agreements had an effect on the transit authorities contracting out for certain work.

Again, an example. In March 1980 the Lane County Mass Transit District in Eugene, Oreg. submitted a grant application to UMTA that included a proposal of about \$280,000 to rehabilitate six buses. In June 1980, ATU local 757 informed the transit district that it would not certify the project, that is, not sign the section 13(c) agreement if it contracted out certain work that its members had historically performed.

The local notified the Labor Management Services Administration that it did not object to certifying part of the project, but it could not certify the bus rehabilitation work. Later, it stated it would not object if the transit district contracted out the exterior body work, machine tooling, frame work, and painting; but that all other work must be done in-house.

This was unacceptable to the transit district, because it believed it was not economically feasible to separate the project. As a result of local 757's position, in September 1980 the application was modified by deleting the bus rehabilitation project.

We also found some of the section 13(c) agreements have provisions that have been interpreted to affect paratransit services, defined as a nonconventional form of public transportation such as van pools, shared taxi rides, and special services for the elderly and handicapped. At four transit authorities, we found the section 13(c) agreements contained provisions affecting the management of paratransit projects. The Tidewater Transportation District Commission, for example, received grants for three paratransit projects. In one, the proposal was to demonstrate that the Navy could use van pools to meet transportation needs not served by fixed-bus routes. It planned to purchase 50 vans and lease them to the Navy and it applied for a demonstration grant of \$550,000. Nine months later, labor certified the grant after the commission and local 1177 negotiated the section 13(c) agreement which provided first that the project would not compete with existing bus routes.

Second, the van pools would be restricted to routes not served by a fixed-bus route; third, ridership would be restricted to military and related civilian personnel, and fourth, local union personnel would maintain the vans.

The commission estimated that because of the delay in certifying the project, the cost of the vans was increased by about \$25,000 due to inflation. Also, it had planned to use nonunion personnel to maintain the vans. Because it had to use union personnel, operating costs increased about \$20,000.

After the project was started, the commission received additional requests from other employers for this type of service. According to the commission, it was unable to assist these employers because

the section 13(c) agreement prevented it from using Federal funds to expand the van pooling project to areas served by a fixed route carrier.

We also found some other effects of the section 13(c) agreements. Again, some examples.

In Albuquerque, the United Transit Union in late 1980 would not sign section 13(c) agreements applicable to three operating grants until it obtained concessions from the city. On their face, it appears that certain issues involved were beyond the intended scope of section 13(c).

For example, local union officials contended that three transit supervisors were creating ill will among the employees. The union demanded the three supervisors be fired or it would not sign the 13(c) agreement.

The union did sign the agreement after one of the supervisors was fired and the other two were disciplined.

Needing to reach agreement on section 13(c) sometimes has resulted in protracted negotiations. An example: in July 1979, the New Jersey State Legislature created the New Jersey Transit Corp. to operate public transportation services in the State by taking over various private bus services.

The transit corporation and its predecessor had submitted requests to UMTA in 1979 for funds to acquire two private bus systems and purchase new buses. The negotiations for a section 13(c) agreement lasted about 18 months. On September 15, 1980, a section 13(c) agreement was reached regarding the purchase of new buses.

In November 1980, another agreement was reached regarding the purchase of two transit authorities and this agreement contained provisions allowing either party to invoke interest arbitration relating to disputes for benefits and work rules.

I might mention that the union sought interest arbitration from the State legislature when it passed the act to set up the authority. The legislature had not granted that, but granted fair and final offer arbitration.

We found 1 case, 1 of the 12, in Seattle, where the transit authority did not obtain a \$1.4 million Federal grant because the union and it could not agree on the section 13(c) agreement. As a result, the capital improvement project was delayed and the capital expenditures will be increased by about \$3 million.

The Snohomish County Public Transit Benefit Area Corp., near Seattle, in March 1977 applied to UMTA for a \$1.4 million grant to purchase new buses and other transit equipment. In June 1977, the corporation and the local union began negotiations on a section 13(c) agreement, but were unable to come to an agreement. Because of the impasse, the corporation in July 1977 began negotiating with the International Union's general counsel and the Labor Management Services Administration in Washington, D.C. These negotiations lasted for several months. They were unsuccessful.

Corporation officials told us that they could not sign the section 13(c) agreement proposed by the union because the agreement required them to submit to onerous legal liabilities. For example, they objected to including an interest arbitration clause in the agreement since it would obligate the corporation to arbitrate ex-

isting collective bargaining agreements. As a result, the corporation withdrew its application for an UMTA grant, the officials told us that losing Federal funds has had a significant impact on the district's capital improvement program.

Let me summarize the sense of our findings, Mr. Chairman. Section 13(c) was enacted to protect employees from losing benefits and rights—including collective bargaining rights—and worsening their employment positions as a result of the public takeover of private systems with Federal funds.

Since the passage of the act, the employee protection agreements have evolved to a document which now contains many pages with numerous provisions. Some section 13(c) agreements include provisions beyond the intent of the act—not only to protect the employee at takeover, but to gain additional benefits for employees and unions. Furthermore, these additional benefits have or could increase some transit system costs.

We believe also that in some cases, the necessity of negotiating a section 13(c) agreement was used to deal with issues that section 13(c) was not intended to reach. Also it seems clear that in some cases the transit authorities and unions negotiated section 13(c) agreements that included provisions, particularly the interest arbitration provisions, at 6 of 12 transit authorities we visited which were not necessary to maintain "the status quo," but which could be used to reach agreements on future collective bargaining issues. To try to compare the results of bargaining with the benefit of these provisions with what would have been the results in their absence would of course be quite speculative.

That concludes the summary of my statement, Mr. Chairman. I will be glad to respond to questions.

[Complete statement follows:]

STATEMENT OF
GREGORY J. AHART, DIRECTOR
HUMAN RESOURCES DIVISION
UNITED STATES GENERAL ACCOUNTING OFFICE

Mr. Chairman and
Members of the Subcommittee

We are pleased to appear here today to report the results of our work requested jointly by you and Senators William Armstrong, Jake Garn, Don Nickles, Dan Quayle, and John Tower, to obtain information on the Department of Labor's administration of the employee protection program under section 13(c) of the Urban Mass Transportation Act of 1964.

Under the act, the Secretary of Transportation is authorized to make grants to help States and local public bodies (and their agencies) to acquire, construct, or reconstruct and improve mass transportation facilities (bus, rail, subway, or other) and services in urban and rural areas.

Section 13(c) of the act provides that, before any assistance is granted, fair and equitable arrangements be made to protect the interests of employees affected by such assistance. The Department of Transportation may not provide financial assistance to any State or local public body unless the Secretary of Labor has certified that the section 13(c) requirements of the act have been met.

Before a request for assistance is approved, the Department's Urban Mass Transportation Administration (UMTA) forwards the grant application to the Labor-Management Services Administration (LMSA) in the Department of Labor to certify the employee protective arrangements.

When the protective arrangements have been agreed to by the grantee and a labor union, LMSA reviews the agreement reached to insure that it meets the requirements of section 13(c). In

the absence of concurrence by either the grantee or labor union, LMSA has the authority to determine the employee protective conditions. If the affected employees are not represented by a labor union, LMSA establishes the employee protection arrangements. The protective arrangements ultimately certified are made a condition of the grant.

CONGRESSIONAL INTENT ON SECTION 13(c)

Section 13(c) of the Urban Mass Transportation Act requires that the employee protective arrangements must provide for:

1. The preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise.
2. The continuation of collective bargaining rights.
3. The protection of individual employees against a worsening of their positions with respect to their employment.
4. Assurances of employment to employees of acquired mass transportation systems and priority of re-employment of employees terminated or laid off.
5. Paid training or re-training programs for employees who had to change jobs.

Section 13(c) also states that in no event shall the protective arrangements provide benefits less than those established pursuant to section 5(2)(f) of the Interstate Commerce Act (49 U.S.C. 5(2)(f)) for the protection of railroad employees. Section 5(2)(f) provides that fair and equitable arrangements be made to protect the interests of railroad employees affected

by any transaction involving a takeover, merger, or consolidation of a railroad system and that such transactions not result in employees being put in a worse employment position.

Section 13(c) was included in the Urban Mass Transportation Act to protect transit employees who lost benefits and rights as a result of the public takeover of major private transit firms. In many cases, transit employees, by virtue of public acquisition became employees of a political subdivision of a State, and because of State laws, union representation for the workers was invalidated.

The legislative history of section 13(c) shows that the congressional intent was to preserve and continue the existing rights, privileges, and benefits of the employees. It does not show any intent that section 13(c) would operate to improve transit employees' benefits or the labor unions' position. For example, the related legislative reports 1/ and congressional debate 2/ included statements that the intent of the legislation was to maintain the status quo concerning rights, benefits, and privileges which labor had acquired in the transit industry under private ownership.

SCOPE, METHODOLOGY AND OVERVIEW

In their letter requesting our work, the requestors stated that section 13(c) as implemented by Labor, was reputed to be among the most costly and intrusive of Federal laws. They pointed

1/Senate Report 82, 88th Congress, 1st sess. (1963).

2/Congressional record, 88th Congress, 1st sess. p. 5683--
Senate debate on the Urban Mass Transportation Act (April 1963).

out that the provision was said to be the cause of transit salary increases exceeding such increases to comparable workers in the private and public sectors, as well as other unjustified transit labor cost increases. Stating their concern that there was insufficient available information to make an informed decision on the issue, they requested our assistance in developing data and other information to evaluate the effects of section 13(c).

The short time-frame and early need for the results of our work did not permit us to use techniques which would assure representativeness in selecting transit authorities and projects for review. Instead, we concentrated our work at twelve transit authorities selected primarily on the basis of information provided by the requestors' offices, a review of LMSA files in Washington, and discussions with LMSA, UMTA, transit authorities, and the American Public Transit Association. Most of the transit authorities were reputed to have had problems in negotiating section 13(c) agreements. Although our work was primarily done at the selected transit authorities, we also performed work at LMSA's national office in Washington, D.C., and at UMTA's Washington, D.C., office and several regional offices.

At the 12 transit authorities, we focused our work in gathering information on whether section 13(c) resulted in additional employee protection benefits, and increased costs for the transit systems.

In summary, the transit authorities claimed that the union(s)--through their negotiations and bargaining for,

and use of section 13(c) agreements--have gained for transit employees and unions, additional benefits, rights and privileges beyond protecting the employees economic position. According to some transit authorities, the additional benefits or rights gained through the operation of section 13(c) have increased or may potentially increase transit operating costs and affect transit riders.

Before presenting the information we obtained during our visits at the 12 transit authorities, we need to point out that for the most part our information was developed at or provided by transit authorities' officials. As such, it may well reflect some bias on the section 13(c) agreements issue. We did discuss the 13(c) problems and issues raised by transit authorities with the officials of the local unions representing the transit employees. But, because of the time constraints, we have not discussed the information developed with LMSA or UMTA, or with the international unions officials who were involved in negotiating the section 13(c) agreements. 1/
LMSA'S POLICIES REGARDING SECTION 13(c)

Throughout the history of section 13(c)--during which the employee protection agreements, under LMSA's administration, have evolved from simple documents containing a warranty paragraph in the early years to agreements numbering many pages containing numerous provisions--LMSA's policy has been one of somewhat limited involvement. Since inception

1/A schedule showing the 12 transit authorities and local unions we visited is in appendix I.

of the section 13(c) program, LMSA's role essentially was to evaluate the sufficiency of terms agreed upon by transit authorities and unions, and to render determinations with respect to matters on which the parties found themselves in disagreement.

Basically, LMSA has relied on transit authorities and unions to negotiate section 13(c) matters and will assist or mediate in negotiations when needed. If the parties can not agree, then LMSA may impose "fair and equitable" terms of employee protection. The Secretary of Labor has exercised his authority to establish the terms of a 13(c) agreement sparingly. As a result, the terms of section 13(c) protective arrangements have been largely the result of labor-management negotiations.

Some transit authorities believe LMSA's policy of requiring the union and the transit authority to negotiate the section 13(c) agreement, and only becoming involved to help mediate issues the parties are not able to resolve, has contributed to their section 13(c) problems. According to some transit authorities, the need to reach agreement as a condition precedent to receiving financial assistance tends to place pressure on transit authorities to agree to union demands.

SECTION 13(c) AGREEMENTS INCLUDE
INTEREST ARBITRATION PROVISIONS

At 6 of the 12 transit authorities we found that section 13(c) agreements included the right for either party to invoke

interest arbitration, 1/ which did not exist in previous collective bargaining agreements.

For example, the Nashville Metropolitan Transit Authority was created in 1963 when Nashville and Davidson County formed the Metropolitan Government, and in September 1973, it officially took over operation of the transit system. In 1973, the authority entered into a contract with a management service company under which the company agreed to manage the transit system. In turn, the company formed a subsidiary corporation to employ all employees necessary for the transit system's operation, thereby maintaining the transit employees' status as private employees with the attendant rights to both collectively bargain and strike. These employees had been represented by the Amalgamated Transit Union (ATU) local 1235 since 1940 and collective bargaining agreements negotiated by the union have governed employee wages and employment conditions.

From 1973 to June 30, 1981, UMTA has provided Nashville \$26.4 million in Federal grants. As a condition for receiving the grants, the Mayor of the Metropolitan Government of Nashville-Davidson County and a local 1235 representative executed section 13(c) employee protection agreements in April 1973, June 1975, and July 1975. All three agreements contain similar provisions allowing either party to invoke interest arbitration to settle a dispute. The local unions' previous collective bargaining agreement with the authority

1/See appendix II for a definition of interest arbitration.

and its predecessor--the Nashville Transit Authority--did not contain such a right.

Local union officials believed that section 13(c) agreements gave the union the right to invoke arbitration to resolve disputes over the terms of a new labor contract. For example, in March 1979 the company and local 1235 officials began negotiations over the terms of a new 3-year collective bargaining agreement. Finally, following the contract's expiration on May 25, 1979 and the failure to resolve contract bargaining impasses, the union invoked the interest arbitration provision of the section 13(c) agreement.

The company and the authority, however, refused to arbitrate. The company's general manager said he adamantly resisted submitting the terms of the new collective bargaining agreement to arbitration primarily because:

- local 1235 had never won the right to demand interest arbitration through collective bargaining and the company had no intention of conceding the right;
- arbitration would have irrevocably undercut the strong tradition of collective bargaining in Nashville; and
- management was unwilling to relinquish control over its operating budget.

In August 1979, on the basis of the union's complaint, a U.S. District Court ordered the authority to enter into binding interest arbitration in accordance with the provisions of its section 13(c) agreement. As a result, the union and the company entered into binding interest arbitration to settle labor disputes in the collective bargaining agreement.

According to company officials, local 1235 members made significant gains through interest arbitration. The officials contended the arbitration award gave union members an initial 17 percent pay increase (the wage increase was 27 percent for 3-year period of the contract) and made extensive improvements in their health care benefits and coverage. They calculated that the arbitration award increased employee wages and benefits by about \$779,000 for fiscal year 1981, and that company costs of arbitration and litigation amounted to \$112,900.

Our analysis showed, however, that the company's estimated 1981 wage increases resulting from arbitration, were substantially overstated since, because of the delay in the effective date of the wage increase, 1981 costs embodied a substantial "catch-up" component. Also, \$29,000 should be excluded because it represented improvement costs in union medical insurance benefits the company offered the union in its final contract proposal during bargaining talks. We were unable to determine what costs the company would have incurred through its regular collective bargaining negotiations.

Company officials do not dispute that the section 13(c) agreements provide for arbitration but they interpreted the agreements more narrowly than the local union. They believe that the agreements were supposed to only protect employee rights, privileges and benefits which might be affected by the UMTA assistance. When it signed the agreement, it did not anticipate that evolving Federal interpretation would

permit local 1235 employees to obtain rights which the union had not previously bargained for.

We were able to obtain data comparing the Nashville transit operators' hourly wage rates with other municipal employees such as school teachers, police officers, and firefighters as of March 1982. Our analysis shows that the transit operators' hourly wage of \$9.42 was only exceeded by the school teachers who earn \$11.86 per hour.

SECTION 13(c) PROVISIONS ON
CONTRACTING OUT PROCEDURES

At 5 of the 12 transit authorities, we found that some of the section 13(c) agreements had an effect on the transit authorities contracting out certain work.

For example, in June 1970, the city of Eugene, Oregon organized the Lane County Mass Transit District and in December 1971, using an UMTA capital grant, the transit district acquired the privately-owned transportation system which served the area. Since the takeover, the transit district has received about \$9.5 million in UMTA capital and operating assistance grants. In 1971, the transit district and ATU local 757 signed the first section 13(c) agreement; in June 1975 and July 1975 they executed two additional agreements.

In March 1980 the transit district submitted a grant application to UMTA that included \$280,000 to rehabilitate six buses, adding 5 to 10 years to their service life. In June 1980 local 757 informed the transit district that it would not certify the project (i.e., sign the section 13(c) agreement) if it contracted out certain work that its members historically

had performed. In July the transit district informed local 757 that the district did not possess the specialized equipment, space or skilled labor to rehabilitate the buses in house, and contended that the contracting for work would not raise a section 13(c) issue since it would not impair the working conditions, security, or other rights of district employees.

During subsequent negotiations, local 757 notified LMSA that it did not object to certifying part of the project, but that it could not certify the bus rehabilitation work. Later in August 1980, the local informed LMSA that since its members historically had not done certain kinds of the rehabilitation work, it would not object if the transit district contracted out the exterior bodywork (including retrofitting lifts and rear doors), machine tooling, frame work, and painting; but that all other work must be done in-house. The local's position was unacceptable to the transit district since it believed it was not economically feasible to separate the rehabilitation project. As a result of local 757's position, in September 1980 the transit district modified its grant application by deleting the bus rehabilitation project.

Transit district officials estimated that it would have cost the district about \$500,000 more to purchase six new buses than the cost of rehabilitating the six old buses. However, the district later amended the UMTA grant to provide for other capital improvements rather than for the purchase of new buses. An official said that bus manufacturers were reluctant to bid on such a small number of buses and that the district equally needed other transit equipment and facilities.

SECTION 13(c) AGREEMENTS PROVISIONS ON
PARATRANSIT SERVICES

Paratransit is defined as nonconventional form of public transportation such as van pools, shared ride taxi services and special services for the elderly and handicapped. At 4 of the 12 transit authorities, we found section 13(c) agreements contained provisions affecting the authorities' management of paratransit projects.

The Tidewater Transportation District Commission, for example, had received grants for three paratransit projects. On one project the commission wanted to demonstrate that the Navy could use van pools to meet transportation needs not served by conventional fixed-route buses. To accomplish this objective, the commission planned to purchase 50 vans and lease them to the Navy. Consequently, in October 1975, it applied for a demonstration grant of \$550,000. Nine months later, in August 1976, LMSA certified the grant after the commission and the local 1177 negotiated a section 13(c) agreement which provided that (1) the project would not compete with existing bus routes, (2) the van pools would be restricted to routes not served by a fixed-route bus, (3) ridership would be restricted to the military and related civilian personnel, and (4) local union personnel would maintain the vans.

The commission estimated that because of the delay in certifying the project the cost of the vans increased by about \$25,000 due to inflation. Also, the commission said it planned to use nonunion personnel to maintain the vans.

However, because it had to use union personnel this increased its operating costs by about \$20,000.

When it initiated the project, the commission intended to transport military related personnel only, and to limit the project's operation. After the project was started, the commission received additional requests from other employers for this type of service. According to commission officials, however, it was unable to assist these employers because the August 1976, section 13(c) agreement prevented it from using Federal funds to expand the van-pooling project to areas served by a fixed-route carrier.

In another case, the commission requested a grant of about \$932,000 from UMTA to buy 15 vans and 2 light-duty buses--with wheel chair lifts--to transport the elderly and handicapped. Local 1177 officials agreed that the 15 vans could be operated by nonunion employees but maintained by union personnel. It insisted, however, that the two buses should be operated as well as maintained by union employees. The commission would not agree and it dropped the two buses from its application.

OTHER EFFECTS OF SECTION 13(c) AGREEMENTS

In addition to issues discussed above, we noted other effects of section 13(c) agreements.

For example, in Albuquerque, the United Transit Union in late 1980 would not sign section 13(c) agreements applicable to three operating assistance grants--totaling \$5.5 million--the Albuquerque Transit System had requested from UMTA in July 1980 until it obtained certain concessions from the city. On their face value, it appears that certain of

the issues involved were beyond the intended scope of section 13(c).

For example, local union officials contended that three Albuquerque transit supervisors were creating "ill will" among the employees. According to transit system officials, the union demanded the three supervisors be fired or it would not sign the agreement. The union signed the agreement after one of the supervisors was fired and the others were disciplined.

Also, union officials claimed that the transit system violated the collective bargaining agreement by allowing six part-time employees to work periods (1) other than during summer vacation and (2) in excess of 32 hours per week. Transit system officials admitted the violations. However, they believed that the violation of the collective bargaining agreement should not have an effect on the 13(c) agreement for operating grants. Nevertheless, transit system officials acceded to the union's request that the six employees be converted to full-time employees. By converting the six employees to full time, the transit system officials said it would incur additional costs of \$8,530 per employee or a total annual increase of \$51,180. Also, the six employees went from non-union as part-time employees to union members as full-time employees.

Protracted negotiations on 13(c) agreement

In July 1979, the New Jersey State legislature created the New Jersey Transit Corporation to operate public transportation service in the State by taking over various private bus firms. During deliberations on the proposed legislation, ATU officials unsuccessfully attempted to persuade the State

legislature to adopt certain employee protection rights such as the right to invoke interest arbitration. However, some of these rights were obtained during negotiations for a section 13(c) agreement in connection with the transit corporation's request for two UMTA grants.

The transit corporation and its predecessor agency had submitted requests to UMTA in 1979 for funds to acquire two private bus systems and to purchase new buses. The negotiations for a 13(c) agreement lasted over 18 months. Finally, on September 15, 1980, a 13(c) agreement was reached regarding the purchase of new buses, and on November 24, 1980, another agreement was reached relating to the purchase of the two transit authorities. Both agreements contained provisions allowing either party to invoke interest arbitration relating to disputes for benefits and work rules.

In another case, the Metropolitan Transit Development Board in San Diego was seeking to contract with a private or public firm to operate its new trolley system from downtown San Diego to the Mexican border. The Board was created by the California legislature to create and operate the trolley system which was to be funded by State gasoline and sales taxes.

Prior to opening the trolley system in 1981, the San Diego Transit Corporation submitted a proposal to the Board to operate the trolley facility. The corporation's general manager believed that the corporation was the logical choice to operate the trolley since it would be able to provide an integrated transportation system for the San Diego area.

However, the Board rejected the proposal. Corporation officials believed that its proposal was rejected because the Board feared that the local union could have used its section 13(c) agreement with the corporation to unionize the Board's trolley employees and thus obtain higher salaries for them.

The Board's general manager confirmed that, although section 13(c) was not the only factor, it was a major factor in influencing the Board's decision not to choose the corporation. He said Board members feared that if the corporation operated the trolley system, the unions could use section 13(c) agreement to obtain bargaining leverage to gain increased wages and other benefits. He said that the Board wanted to pay the trolley employees wages and benefits that were more comparable to other public employees rather than corporation's employees' salaries.

INABILITY TO NEGOTIATE SECTION 13(c)

We found that the Snohomish County Public Transit Benefit Area Corporation, near Seattle, Washington, did not obtain a \$1.4 million Federal grant because it and the ATU local 1576 could not agree on a section 13(c) agreement. As a result, the county's capital improvement program was delayed and, according to corporation officials, its capital expenditures will be increased by about \$3 million.

In 1975, Snohomish County formed the Snohomish County Public Transit Benefit Area Corporation to provide mass transit service to part of the county. In March 1977, the corporation applied to UMTA for a \$1.4 million grant to purchase new buses and other transit equipment. Corporation officials considered

this application to be the first phase of a 4-year capital improvement program costing \$8.4 million.

In June 1977, the corporation and ATU local 1576--which was the bargaining agent for transit employees in the area--began negotiations on a section 13(c) agreement but they were unable to come to an agreement. Because of the impasse, the corporation in July 1977, began negotiating with ATU's general counsel and LMSA in Washington, D.C. These negotiations lasted until March 2, 1978, and again they were unsuccessful.

Corporation officials said they could not sign the section 13(c) agreement proposed by the ATU because the agreement required them to submit to onerous legal liabilities. For example, they objected to including an interest arbitration clause in the section 13(c) agreement since it would obligate the corporation to arbitrate existing collective bargaining agreements. The corporation, however, said that interest arbitration is contrary to Washington State laws and that existing collective bargaining agreements do not provide for it.

As a result, the corporation withdrew its application for the UMTA grant. Corporation officials said that losing the \$1.4 million in Federal funds has had a significant impact on the district's capital improvement program by delaying its completion and thereby increasing costs due to inflation. For example, it took 2 years longer than planned to acquire the buses needed to provide route coverage and it has been unable to acquire bus signs and other transit equipment necessary for an efficient operation. Officials estimated

that the these delays will result in increased costs of about \$3 million.

OBSERVATIONS

Section 13(c) was enacted to protect transit employees from losing benefits and rights--including collective bargaining rights--and worsening their employment positions, as a result of the public takeover of private transit firms with Federal funds. Since the passage of the act, the employee protection agreements evolved from a simple document containing a warranty statement, in the early years, to agreements numbering many pages with numerous provisions.

Some agreements negotiated under section 13(c) included provisions going beyond the original intent of the legislation--not only to protect the employee at takeover, but to gain additional benefits for transit employees and the transit unions. Furthermore, these additional benefits have, or could increase some transit system costs.

We also believe that in some cases, the necessity of negotiating a section 13(c) agreement was used to deal with issues section 13(c) was not intended to reach. Also, it seems clear that in some cases, the transit authorities and unions negotiated section 13(c) agreements that included provisions--particularly interest arbitration provisions at 6 of 12 transit authorities we visited which were not necessary to maintain the "status quo" but which could be used in reaching agreements on future collective bargaining issues. To try to compare the results of bargaining with

the benefit of these provisions with what would have been the results in their absence would of course be quite speculative.

Mr. Chairman, this concludes our prepared statement. We will be pleased to respond to any questions that you or other members of the Subcommittee may have.

APPENDIX I

APPENDIX I

12 SELECTEDTRANSIT AUTHORITIES AND UNION LOCALSVISITED BY GAO

<u>Transit authorities</u>	<u>Local union organizations</u>
1. Metropolitan Atlanta Rapid Transit Authority, Atlanta, Georgia	Local 732 <u>a/</u>
2. Metropolitan Transit Authority, Nashville, Tennessee	Local 1235 <u>a/</u>
3. San Diego Transit Corporation, San Diego, California	Local 1309 <u>a/</u>
4. Southern California Rapid Transit District, Los Angeles, California	Local 1277 <u>a/</u>
5. Tidewater Transportation District Commission, Norfolk, Virginia	Local 1177 <u>a/</u>
6. Port Authority of Allegheny County, Pittsburgh, Pennsylvania	Local 85 <u>a/</u>
7. New Jersey Transit Corporation, Newark, New Jersey	Local 819 <u>a/</u>
8. Lane County Mass Transit District, Eugene, Oregon	Local 757 <u>a/</u>
9. Snohomish County Public Transportation Benefit Association, Everett, Washington	Local 1576 <u>a/</u>
10. Municipality of Metropolitan Seattle, Seattle, Washington	Local 587 <u>a/</u>
11. City of Everett, Transit Division, Everett, Washington	Local 883 <u>a/</u>
12. Albuquerque Transit System (Sun Tran), Albuquerque, New Mexico	Local 1745 <u>b/</u>

a/These local union organizations are affiliated with the Amalgamated Transit Union, Washington, D.C. In some cases, international officials were present during GAO's visits.

b/This local union organization is affiliated with the United Transportation Union, Cleveland, Ohio.

DEFINITION OF
INTEREST ARBITRATION 1/

Arbitration is a proceeding voluntarily chosen by parties who want a dispute determined by an impartial judge of their own mutual selection, whose decision, based on the merits of the case, they agree in advance to accept as final and binding.

The distinction between "rights" and "interests" is basic in the classification of labor disputes and in views as to arbitrability. Disputes as to "rights" involve the interpretation or application of laws, agreements, or customary practices, whereas disputes as to "interests" involve the question of what shall be the basic terms and conditions to employment.

The U.S. Supreme Court has explained, the fundamental distinction between "interests" and "rights" disputes in a 1945 decision 2/.

"The first relates to disputes over the formation of collective agreements or efforts to secure them. They arise where there is no such agreement or where it is sought to change the terms of one, and, therefore, the issue is not whether an existing agreement controls the controversy. They look to the acquisition of rights for the future, not to assertion of rights claimed to have vested in the past.

"The second class, however, contemplates the existence of a collective agreement already concluded or, at any rate, a situation in which no effort is made to bring about a formal change in terms or to create a new one. The dispute relates either to the meaning or proper application of a particular provision with reference to a specific situation or to an omitted case. In the latter event the claim is founded upon some incident of the employment relation, or asserted one, independent of those covered by the collective agreement * * *. In either case the claim is to rights accrued, not merely to have new ones created for the future."

1/Frank Elkouri and Edna Asper Elkouri, How Arbitration Works, Third Edition, 1973, The Bureau of National Affairs, Inc., Washington, D.C., p. 2 - 47.

2/Elgin, J. & E. Ry. Co. v. Burley, (65 S.Ct. 1282, 1290, 16 LRRM 749, 1945), involving the Railway Labor Act. The Court noted that the two basic types of disputes are traditionally called "major" and "minor" disputes in the railroad industry.

Senator LUGAR. Thank you very much. The chair now calls upon Mr. John Houston for his testimony.

STATEMENT OF JOHN CHARLES HOUSTON, DIRECTOR OF CONGRESSIONAL AFFAIRS FOR THE PUBLIC SERVICE RESEARCH COUNCIL

Mr. HOUSTON. My name is John Charles Houston. I am director of Congressional Affairs for the Public Service Research Council, located in Vienna, Va. The Public Service Research Council is a nonprofit organization concerned with the special privileges of unions granted by government. We have approximately 1 million members around the United States.

The subject of the Urban Mass Transit Act has been of interest to the council for a long time because of its 13(c). We believe that since 13(c) is entirely a creation of Congress, that Congress must be fully accountable for the impact that 13(c) is having on transit problems all over the country. In theory 13(c) was created to protect employees in the transition period between takeover from private transportation companies by local governments. Out of this has grown a bureaucratic nightmare which seriously undermines the quality of mass transit, increasing the cost of transit, while destroying the managerial powers of elected officials.

What provision of law could be so onerous as to do all this? To understand why 13(c) has these effects you have to look at the theory of public sector collective bargaining, and then examine the reality of labor relations under 13(c). In theory when public employees bargain with government, the union is equal with the elected or appointed official with whom they are bargaining. These two parties reduce the matters that concern them to a contract which is mutually binding. Presumably both parties bring something to the table which they give up, or offer in exchange for the agreement of the other side. Presumably both sides are constrained by budgets and tax resources provided by the taxpayers. Presumably both are constrained by the political accountability of elected officials who are bargaining, and the public pressure on these officials to reach fair terms, while not bankrupting the government. Presumably State laws govern the practice of such bargaining, as the intimate workings of government vis-a-vis its employees directly affects the power of local government to exist as autonomous of larger units of government.

The Supreme Court held in *National League of Cities v. Usery* that local governments could not be subject to Federal minimum wage standards because to do so would directly violate the 10th amendment's prohibition against intruding into the autonomous nature of local government, and the limited powers attributed to the Federal Government. The theory of public sector collective bargaining is that local governments can sign contracts with unions, and not lose their autonomy to any arm of the Federal Government, and retain their accountability to voters and taxpayers in the process.

That is the theory. Let's take a look at the effect of 13(c) before getting into individual cases. As we know, 13(c) derives its importance from the Federal funds granted by Congress to subsidize local

mass transit. Local governments make application to the Department of Transportation for UMTA grants. In the course of receiving these applications DOT notifies the Department of Labor that city X has applied. Both the city and the union know that this will occur. DOT then processes the application and may grant the application pending approval by DOL. Whether as operation subsidies or capital subsidies, all amounts are relegated to the same review by DOL.

DOL, in theory, is supposed to accept a signed contract as evidence that the employee protection provisions of the law have been complied with. When DOL receives such information, it allows the grant to be made.

In theory, none of this is supposed to have anything to do with collective bargaining. Congress certainly never said that it was its policy to inject itself into the bargaining process on behalf of one party or the other. State laws on collective bargaining vary widely in this country ranging from mandatory collective bargaining to outright prohibitions on collective bargaining. One study recently conducted by the Public Service Research Council showed that about four-fifths of local governments do not bargain with unions, based on census figures. While there have been bargaining laws for over 20 years in some States, many State legislatures have either refused to pass such laws, or have passed some kind of prohibition or bargaining altogether.

Whatever argument you could make for union protection, stemming from concern for employees in 1964, have been largely overtaken by events. First, most conversions from private to public transit have occurred. Whatever disability might be associated with employees in such conversions must be distinguished between the workers and a union. A study by this subcommittee in 1981 showed that the salaries for bus drivers in a cross section of cities was significantly higher than for a variety of other public employees such as teachers and safety workers, rendering moot the need for further protection. So any adverse affects of these transitions seems to have been overcompensated for relative to others working for local governments.

Second, the law as it now stands intends that collective bargaining occurs with unions. Collective bargaining can occur only if it has any chance of working without the influence of an outside party such as the Federal Government looking over the shoulder of local officials, threatening to cut off their operating subsidies unless they accede to the unions' full slate of requests. The effect of the Federal Government doing so is to significantly curtail collective bargaining in transit negotiations, either by turning them into a pro forma session prior to binding arbitration or by providing the union with a complete veto over the UMTA grants going to their members' employer.

While one can admire the ingeniousness of 13(c) for producing results that are good for unions, one must recall that these are matters of public policy and the concern of all citizens, not just those who happen to belong to transit unions. We all pay taxes; we all are affected by the quality and quantity of transit. The economy of many major cities is closely tied to the health and vitality of its mass transit system. A glance at these mass transit systems shows

that many of them are in serious financial trouble with a faltering commitment from local government to go on increasing fares to cover the ever increasing operating deficits. It would seem to be time to re-examine the handy work of Congress to see if the public is well served by 13(c), or whether only one special interest is served by it, to the disadvantage of the public.

In light of the history of State legislation on collective bargaining for public employees since 13(c) was enacted, it would seem to be highly inappropriate for the Federal Government to now directly impinge on the State policy which has become much more clearly defined and sophisticated. Collective bargaining itself is being directly interfered with by 13(c), which has become an engine for producing results clearly favorable to only one party. No theory of collective bargaining allows for the direct intervention of the Federal Government or any other governmental agency so clearly on behalf of a union with the clear results that the record of 13(c) has created. The presumption that elected officials can still act in a manner which is accountable to the voters on transit matters after the effects of this process are completed, strains one to find much evidence for accountability of elected officials for the present state of mass transit; 13(c), as a largely unknown factor in mass transit, deprives the voters and taxpayers of each city or town, their voice in the cost and quality of transit. Under such a system of mass transit, 13(c) estranges the public from influencing the outcome of these decisions. It is unfair to ask people to pay for the cost of Government while depriving them of all meaningful decisionmaking themselves or independent judgment from their elected officials, for which the voters will hold them accountable for at election time.

No one who voted for 13(c) in 1964 would have intended such a sad state of affairs in 1982. But that is not excuse enough for ignoring the deleterious effects which it is having, not only on transportation but upon the very essence of representative government itself. Were we to make all decisions about local government through a 13(c) style process, elections for local offices, referendums on tax and policy matters, the judgments of local courts, would be a meaningless sham. While local government retains the appearance of controlling its concerns through a form of representative institutions, much of the substantive decisionmaking has been leached away. So, at base we see that it is not just public officials who are being coerced by 13(c), it is the consumers of mass transit, the tax paying public who is being coerced by 13(c).

Given the wide variety of State laws, one would assume then that there would be a wide variation in the way in which transit companies as public entities carried out their obligations in matters of personnel. In fact, we find a startling similarity, a similarity which is difficult to find in other public services, where different laws are supposed to apply. Comments from the unions themselves affirm that State laws are not being allowed to work properly because of 13(c).

In the case of mass transit, where cities are receiving grants from UMTA, there is a vast degree of uniformity that one would not expect to see if one were looking at the laws from the various

States, not only in regard to bargaining itself, but also the highly controversial practice of binding arbitration.

In 1964 when this section was passed, only two States had collective bargaining laws. Now 38 States have such statutes, including Florida, which was the site of the dispute which provoked Congress to create 13(c). The other 12 States have either refused to pass such laws or forbid collective bargaining altogether.

Since 1975 only one State has passed a collective bargaining statute. Last year bills were introduced in 12 legislatures to repeal existing bargaining statutes. Regardless of whether one is for or against collective bargaining for public employees, it is clear that the issue is highly controversial and susceptible of many uses and interpretations, as recent history has shown. In contrast to this is the behavior of local transit authorities vis-a-vis collective bargaining and binding arbitration.

For example, 18 States have binding arbitration laws requiring some element of public employee disputes to be taken on by an outside arbitrator. Yet we find that contracts signed by transit companies in virtually every State engage in the practice of binding arbitration. What is even more surprising is that in States where binding arbitration has been held to be unconstitutional, binding arbitration has since been used in UMTA contracts. Four State supreme courts have held that binding arbitration to determine matters of public personnel policies, including wage rates and benefits were unlawful delegations of power to nonelected officials. What then could persuade local authorities to violate their own State laws? Apparently the lure of Federal dollars has bought a Faustian result for transit companies even in the absence of a State law authorizing binding arbitration.

In the recent GAO study, the element of binding arbitration was present in a number of contracts where cities had 13(c) problems. Why do unions in the public sector like binding arbitration, while those in the private sector have traditionally been highly skeptical of its benefits? Because, binding arbitration for public sector unions is an integral part of getting favorable decisions which they could get in no other decisionmaking process.

Binding arbitration in this case undercuts the whole notion that collective bargaining is as fair and open as it claims to be in theory. Transit companies describe a phenomenon in collective bargaining which happens every time they begin bargaining. They say customarily the union "asks for the Moon," meaning that they make demands that are impossible for any transit company to meet. These are, of course, rejected by the transit company. So much for collective bargaining.

Enter binding arbitration. Under this process, a paid decisionmaker enters and appearing, to use the wisdom of Solomon, compromises between the union's Moon and what the transit company projects are the maximum wage rates that its budget will allow. Binding arbitration shortcircuits either the accountability of local transit officials or the union. Public opinion or comment is completely irrelevant. There are no legislative constraints on the decisionmaker, the arbitrator.

Whatever the advantages or disadvantages of collective bargaining are, they are not being enjoyed because binding arbitration vir-

tually supplants all the functions that collective bargaining is supposed to serve.

Binding arbitration enters these contracts through the heavy club of 13(c). If the transit officials don't sign a contract requiring binding arbitration as proposed by the union, they will not receive their Federal assistance. This places the Federal Government in the position of coercing local governments to relinquish their managerial authority to an unelected official even where their State law forbids it or does not sanction it. A scientist taking a random sample might conclude that the effect of 13(c) is the proliferating practice of binding arbitration, against the contrary judgment of many mass transit officials.

Binding arbitration came on the public employee labor scene as a cure-all for the ills of illegal strikes by public employees. The promise of arbitration was that it would solve the problems that precipitated the strikes. But after extensive experience with the effects of binding arbitration, many of its proponents have called for its abolition.

On February 7, 1981, the National Journal reported: The mayor (Coleman Young—Democrat of Detroit) said he urged the State legislature to repeal Michigan's compulsory arbitration law, a statute, ironically, that he cosponsored in 1969. "We know that compulsory arbitration has been a failure," he said. "Slowly, inexorably, compulsory arbitration destroys sensible fiscal management," and the arbitration awards, he added, "have caused more damage to the public service in Detroit than the strikes they were designed to prevent."

The State supreme court of Colorado, in a decision similar to that of California, Utah, and South Dakota struck down binding arbitration as an unlawful delegation of power.

The court said: The trial court ruled that the amendment provisions concerning compulsory binding arbitration constitute an unlawful delegation of legislative power. This is an issue of first impression in Colorado. We are persuaded that this view is correct. * * * A contrary holding in our view, would seriously conflict with basic tenets of representative government. Fundamental among these tenets is the precept that officials engaged in governmental decisionmaking—for example, setting budgets, salaries and other terms and conditions of public employment—must be accountable to the citizens they represent. Binding arbitration removes these decisions from the aegis of elected representatives, placing them in the hands of an outside person who has no accountability to the public. (*Greeley Police Union and Donald O'Leary v. City Council of Greeley, et al*; Colorado Supreme Court, Case No. 26992, August 23, 1976.)

Where serious, fundamental problems are raised by binding arbitration, the Department of Labor routinely holds up UMTA grants until contracts are signed with such requirements for deciding on how and when the trains will run, and what the public tab for it will be.

More evidence of the deep-seated problems arising from 13(c) is the mounting reaction by State legislatures trying to enhance the power of management in transit to compensate for the overwhelming hand that has been dealt transit unions. Massachusetts passed

such a law, and many others have introduced such legislation. A number of cases are now going to the Supreme Court testing various parts of the fundamental constitutionality of 13(c) and its harmful impact on mass transit. But all these efforts fall far short of the powers of Congress to directly address the organism itself. These secondary reactions mostly deal with the symptoms of 13(c), while they are powerless to address the fundamental question which Members of the Senate have to answer, as only they can.

Let me conclude with the recommendation of the Public Service Research Council. The promise of 13(c) has never been achieved, nor is it ever likely to. While the Congress did not intend such a massive intrusion into State laws and policies, 13(c) has had this effect. The operation of 13(c) contradicts the stated purpose of the statute, undermining all phases of collective bargaining, undermining the power of elected officials to act on behalf of voters and the taxpayers, and runs rough shod over any concept of local control of local government. There is no way to rehabilitate either the premise or the practice of this section of the law. A mistake is still a mistake, whether it is used broadly or circumspectly. There is no way to change this mistake into anything which is conducive to good transit policies, good government or public accountability by officials for the results.

13(c) needs to be abolished without delay. Delay means only further continuation of the problems described from an increasingly dissatisfied body of academics, local officials, public interest organizations, and Members of Congress. Transit unions find themselves alone defending the status quo.

These problems are pervasive, predictable and attributable to one cause, 13(c). To fail now to end this mischief would be to ignore a much greater present harm than any theoretical harm that first motivated Congress to enact this section into law. We strongly urge that section 13(c) of the UMTA be repealed.

[Additional material received for the record follows:]

BINDING ARBITRATION AND PUBLIC SECTOR LABOR DISPUTES

Published by The Public Service Research Council

The major labor relations phenomenon of the last two decades has been the spread of unionization and collective bargaining in the public sector. Presently, thirty-seven states have mandated a form of bargaining for at least some types of employees at the state and/or local government level. The latest report by the Bureau of the Census indicates that in 1979, 47.9 percent of full-time state and local government employees were organized into unions. The significance of this is more apparent when it is recognized that less than 20 percent of the private sector work force belongs to unions.

With only slight modification, it is the private sector collective bargaining model that has been transplanted to the public sector. Experience with labor relations in government employment is demonstrating that certain critical differences between the two employment sectors make private sector labor relations practices incompatible with our traditions of democratic governance and, therefore, unsuited for use in the public sector. One particularly troublesome area is the increased advocacy and use of binding arbitration as a disputes resolution mechanism in the public sector.

WHAT IS ARBITRATION?

Although the use of arbitration is increasingly common in public sector labor relations and demand for its increased use grows, there is widespread lack of understanding of the process and what it entails. This is true for many public officials as well as the public at large. An excellent capsule description of the process has been provided by Myron Lieberman in Public Sector Bargaining.

Basically, arbitration is a procedure whereby an impartial third party makes a decision in a labor dispute. Arbitration may be voluntary (the parties have agreed to it) or involuntary (it is imposed on the parties by law). Arbitration may also be advisory (the arbitral decision is recommended) or binding (the parties are bound by the decision). Binding arbitration is sometimes further divided into two additional categories: final (the parties cannot appeal the decision to the courts), and binding but not final (the arbitral decision is binding but can be appealed to the courts.)

Essentially, two kinds of labor disputes may be subject to arbitration. One type is commonly referred to as "interest disputes," that is, disputes over what the terms of a labor contract should be. A situation in which the employer and union were at impasse over salaries for the coming year and agreed or were required by law to turn the dispute over to an arbitrator would be an interest dispute. Suppose however, that the employer and union already have a contract covering salaries, but a dispute arises over what X should be paid pursuant to such a contract. If X files a grievance alleging that he was not paid in accordance with the contract and if the grievance is ultimately carried to arbitration, then that procedure would be called "rights arbitration," that is, arbitration over the meaning, interpretation and/or application of a labor contract.

Both types of arbitration are of concern for each has serious implications for our system of governance. This discussion will address interest arbitration and its attendant problems before moving on to rights or grievance arbitration.

For the purposes of this analysis, the term arbitration will mean binding arbitration. It is the ability of an outside third party to impose a binding settlement on the parties that is of concern. Although the compulsory nature of involuntary arbitration make it more onerous, the consequences of participating in the arbitration process are the same whether the parties voluntarily or involuntarily entered into it. Furthermore, a nonfinal form of arbitration is preferable to the final form which does not provide for judicial review of the arbitration award. However, experience with the courts has shown that in most cases, an arbitrator must have acted in an extremely capricious manner or significantly exceeded his statutory authority before an award will be overturned.

INTEREST ARBITRATION

The rapid increase in public sector collective bargaining in the last twenty years has been accompanied by an attendant rise in the level of public sector strike activity. Whereas strikes against government were rare in the early 1960's (28 in 1961, for example) they have become commonplace. According to data compiled by the Bureau of Labor Statistics, there were a record 593 public sector strikes in 1979 and 536 in 1980. The decade of the seventies averaged in excess of 400 government work stoppages per year.

The heightened public awareness of, and experience with public sector strikes makes it unnecessary to provide an enumeration of the dangers and disadvantages of such activity. Suffice to say that these strikes are generally held to be undesirable in that they pose a threat to the public welfare.

The increased resort to the strike by unions of public employees, despite the undesirability and general illegality of such actions, has spawned a search for a means of preventing strikes. Increasingly binding interest arbitration is advocated as that preventive device. It has been reasoned, and public sector unions have argued, that the only fair substitute for the strike is a process in which a neutral party arrives at a decision that is binding on both parties.

To date, nineteen states have accepted this reasoning and mandated arbitration to settle bargaining impasses, most commonly those involving public safety employees. In addition, several other statutes permit interest arbitration upon the agreement of both parties. The overwhelming majority of these statutes were enacted in the 1970's.

OPPOSITION GROWS

Public officials and public sector unions increasingly find themselves on opposite sides of the arbitration question. As experience with interest arbitration mounts, more and more public officials see less harm in weathering a strike than in submitting negotiations impasses to arbitration. The Seattle Post Intelligencer reported on March 7, 1976:

Mayor Wes Uhlman said yesterday he'd rather go through a strike by public employees than wind up with a binding agreement made by an "irresponsible" arbitrator whose decision could bankrupt the city.

Mayor Uhlman's concern about the deleterious fiscal effect of binding interest arbitration is an all too unpleasant reality for Detroit Mayor Coleman Young. An original sponsor of Michigan's compulsory police and fire arbitration statute when he was a member of the state legislature, Young now considers the vote a mistake and the legislation responsible for much of the financial difficulty now facing his city. The February 7, 1981 National Journal reported:

The mayor said he will urge the state legislature to repeal Michigan's compulsory arbitration law, a statute, ironically, that he co-sponsored in 1969. "We know that compulsory arbitration has been a failure," he said. "Slowly, inexorably, compulsory arbitration destroys sensible fiscal management," and the arbitration awards, he added, "have caused more damage to the public service in Detroit than the strikes they were designed to prevent."

Officials of the Washington D.C. Metropolitan Area Transit Authority have approached the legislatures of Maryland, Virginia and the District of Columbia City Council seeking repeal of the statute providing for binding arbitration of disputes with the transit system's unions. Metro argues that arbitration awards have been so generous as to threaten the financial solvency of the system. Some local jurisdictions, citing costs disproportionate to levels of service, have withdrawn from the regional transit system, and other local governments are threatening to do the same. The February 2, 1981 Washington Star reported:

It is arbitration awards, handed down by the professional arbitrators who don't live in the Washington area, which Metro officials feel are responsible for the cost of living clause that yearly costs Washington area taxpayers millions of dollars.

While it is one of those battles that rarely excites public interest, the stakes are high. In 1980, every man, woman and child in the Washington area paid \$4 toward the \$12.3 million in cost-of-living increases granted Metro's 5,000 union employees.

Many arbitration statutes stipulate that the arbitrator must consider the government's ability to pay in forming his decision, but this may provide little protection from overly costly awards. John Baker, former Assistant City Manager of Oakland, California, who has described that city's experience with arbitration as "disastrous," made this observation in a speech reported in the October 23, 1981 Government Union Critique:

Although Oakland's arbitration ordinance states that the city's ability to pay is a factor the arbitrator must consider when in reaching a decision, Baker felt that it was rarely an important consideration. He personally queried arbitrators about three of Oakland's cases as to the importance of the ability to pay in their decision-making. In only one case did the arbitrator indicate he had included it in his considerations. In one case, the arbitrator replied it had occurred to him as an "after-thought," and he hadn't given it much weight. The other arbitrator replied that ability to pay did not matter, because the city could take the money from other programs.

Support for interest arbitration, though, has continued to grow among unions active in the public sector. Originally advocated for public safety employees who were denied the ability to strike, arbitration is now sought for all types of public employees. This advocacy reflects the changing nature of public sector labor relations. From a tactical perspective, the strike weapon is not as effective as it once was, particularly for employee groups providing non-critical services. As public sector management has become more experienced in labor relations, they have become better able to weather a strike. Some actually realize budgetary savings as a result of not having to meet payroll during a work stoppage.

In addition, participants in illegal strikes are frequently fined and occasionally dismissed from their jobs. Penalties are also assessed against unions that lead illegal strikes. President Reagan's response to the air traffic controllers' strike is graphic illustration of this, and many unions fear other public officials may emulate the President's action.

From the union's point of view, the potential for relief from the legislative branch is not bright. Attempts to legalize strikes have not been well received in state legislatures, and opinion polls point to a growing dissatisfaction with strikes against government. The President, for example, has received high marks for his handling of the PATCO strike.

These realities have not been lost on union officials. Robert Chanin, former General Counsel of the National Education Association, addressed this point at a January 15, 1981, conference on public sector labor relations jointly sponsored by the Labor Management Relations Service of the U.S. Conference of Mayors and the American Arbitration Association. Chanin said:

During the 1960's teacher strikes were something new. They got lots of attention and had an effect. But now the novelty has worn off, and school boards have learned they can take a teacher strike. After all, people generally recognize that teacher strikes do not pose an immediate threat to the health and safety of the community.

The courts are turning tough. The fines are getting big. But more than money, teachers have begun to see the insides of jail cells. . . .

So there's an increasing recognition on the part of the (National Education) Association that strikes are not the answer. The Association is looking at alternatives to strikes, and binding interest arbitration is one of them.

In addition, many public sector unions have come to view the arbitration process as a "no lose" situation. The arbitrator's tendency is to issue an award that falls between the final positions of both parties. After negotiating the maximum concession from management, the union can declare an impasse and invoke binding arbitration with the certain knowledge that the arbitration award will not be any less than what has already been negotiated.

Some may view this debate as merely part of the normal, on-going struggle between labor and management. On surface examination, compulsory binding interest arbitration does seem to embody the proverbial "Wisdom of Solomon." What could be more reasonable than having an impartial third party settle a labor relations dispute, particularly if it will prevent an undesirable strike? However, this rather simplistic view fails to take into account the long-range effect of arbitration on both the bargaining process and the special relationship that exists between a government and its citizens in a democratic society.

DISTORTION OF THE BARGAINING PROCESS

There is a growing body of evidence to indicate that the availability of compulsory binding arbitration as an impasse resolution procedure results in a distortion of the collective bargaining process. Instead of negotiating to agreement, the union, seeing minimal risk in arbitration, is more likely to declare an impasse and allow the arbitrator to make the decision. A two and one-half year study funded by the New York State Public Employee Relations Board and the National Science Foundation and conducted by Cornell University found "a 16 percent increase in the probability of an impasse occurring in negotiations" when compulsory arbitration was available.

The April 1978 issue of the U.S. Conference of Mayors Labor Management Relations Service (LMRS) Newsletter reported:

The new Wisconsin law amendments giving city and school employees the right to interest arbitration in impasses results in 44 petitions filed in the first 44 days of the new provisions, Morris Slavney, Chairman of the Wisconsin Employment Relations Commission, disclosed.

Wisconsin school board officials complained that union leaders believe arbitrators will tend to be more sympathetic to public workers than taxpayers in awarding settlements.

Eugene F. Berrodin, Assistant Director of the Michigan Municipal League, in a paper entitled, "What's Wrong With Compulsory Arbitration?" stated similar concerns. He wrote:

In entering arbitration, most of the risk is assumed by the employer, who is subject to a costly award. It is rare to the point of non-existence, for the union to risk any decrease in current wages, salaries or working conditions. Therefore, experience to date indicates that many unions consider arbitration to be a non-risk or low-risk venture. Employers may urgently seek to arrive at a settlement in order to minimize their risk in arbitration. This combination of forces under Michigan labor law leads to the conclusion that there has been an inflationary bias in compulsory arbitration which has led some employers to grant wage increases and benefits in excess of what would have been granted in the absence of compulsory arbitration.

Mayor Don Johnston of Coeur d'Alene, Idaho, writing in the November 1977 issue of Idaho City Magazine, noted the tendency of arbitrators to more frequently accept the union's position. Mayor Johnston wrote:

Public employee unions and associations have nothing to lose and, frequently, a great deal to gain by holding out for binding arbitration. In Massachusetts, as of March 28, 1977, arbitrator's awards have favored union's proposals 28 times as opposed to favoring management's proposals only 13 times. On three occasions both parties submitted identical last best offers.

Philadelphia's experience with Act 111, Pennsylvania's statute mandating arbitration of police and firefighter impasses, graphically illustrates the chilling effect of arbitration. Writing in the December 1980 LMRS Newsletter, Ellis M. Saul, Assistant City Solicitor, and William Grab, Personnel Technician for the City of Philadelphia, describe what now passes for collective bargaining in the City of Brotherly Love.

From 1956 to 1968, collective bargaining was informal. In June of 1968, Pennsylvania Act No. 111 was enacted by the State Legislature, providing for binding compulsory arbitration for interest disputes involving police and fire employees of the Commonwealth and its political subdivisions. . . .

Beginning with fiscal year 1971 (7/1/70 to 6/30/71), to present, every police and fire contract has been determined through binding arbitration under Act 111

There have been no police or firefighter strikes since the inception of arbitration. However, since Act 111 went into effect, the negotiating process has been chilled to the extent that, in most years there have been five or less negotiating sessions prior to reaching of impasse and the invocation of arbitration, with little serious movement from the parties' initial positions. In all of these cases, the impasse has been declared and arbitration requested by the Unions.

During the 1980 negotiations, for the first time (since 1969) a tentative negotiated agreement was reached with one of the employee representation organizations. Local 22's executive board and the City reached an agreement for a four year pact in February 1980. However, the rank and file membership, hoping to do better in arbitration, overwhelmingly rejected the pact.

The arbitration process also entails certain administrative costs. The California Department of Finance, in January of 1976, prepared an estimate of the costs of extending compulsory binding arbitration to disputes involving fire and public safety employees. The study estimated there would be 300 negotiations per year. Based on research done by James L. Stern and others in Final Offer Arbitration, it was calculated that 30 percent of all negotiations would go to arbitration. It was further calculated that, on average, an arbitration process would cost the government involved an amount in excess of \$12,000. This meant California taxpayers would be paying some \$1,089,000 per year in arbitration costs. In his earlier cited speech, John Baker noted that it cost the city of Oakland from \$25,000 to \$90,000 to prepare for a single arbitration case.

DEMOCRATIC PROCESS THWARTED

More important than these fiscal and administrative costs associated with the use of compulsory binding arbitration are the political costs involved in its use. Dr. Sylvester Petro in his March 1974 Wake Forest Law Review article "Sovereignty and Compulsory Public Sector Bargaining" wrote: "Compulsory arbitration of public sector bargaining impasses is, if possible, even more destructive of governmental -- and -- popular sovereignty than are public sector bargaining and strikes."

Harry H. Wellington and Ralph K. Winter, Jr. in their 1971 Brookings Institution study The Unions and the Cities, noted that strikes by public sector

unions may be so effective a weapon as to "distort 'the normal American political process.'" This is one of the considerations that spawned the search for an alternative to strikes. However, it must be recognized that the alternative, binding arbitration, also possesses the power to distort the political process.

Compulsory public sector collective bargaining diminishes citizen control of government by requiring elected officials to share what had been unilateral decision-making authority with unions. -Compulsory binding arbitration completely destroys the concept of citizen control by turning over absolute decision-making power to third parties who are in no way accountable to the citizens of any governmental unit.

In "Final-Offer Arbitration and Teacher Contract Bargaining" published in The Journal of Collective Negotiations in the Public Sector, Vol 7, No. 4, Dr. Richard A. King wrote:

The costs of teacher bargaining include not only potential fiscal losses by both parties and the disruption of a necessary service to the public, but also the potential destruction of local fiscal control

By establishing a procedure for deciding one offer or another by a private, non-elected board, legislators are in effect delegating governmental decision-making power in a manner that might be unconstitutional. By mandating school boards to accept a binding award that must then be funded by the public, legislators may be instituting a form of taxation without representation.

This very concern has been echoed by public officials and labor relations experts of varying philosophies and approaches to public sector bargaining problems. Paul R. Soglin, former Mayor of Madison, Wisconsin, wrote in an article in the November 1977 LMRS Newsletter: "By requiring compulsory, final, and binding arbitration, the responsibility of administering government is taken away from elected officials." It follows that, if decision-making power is taken from elected officials, it is taken from the citizens.

Former Massachusetts Governor Michael S. Dukakis, in a statement vetoing reenactment of compulsory binding arbitration for public safety employees in his state, wrote:

By imposing binding arbitration on all communities - no matter how willing and able the given city or town has been to negotiate in good faith with its employees - the law has made normal collective bargaining irrelevant. It has taken the responsibility of determining the financial future of the city or town, at least insofar as the cost of public safety services affect that financial future, from the local elected officials and given that responsibility to an unelected arbitrator who may not even live in the community. I do not believe that this broad delegation of local fiscal powers is consistent with any reasonable notion of home rule

Perhaps the most damning indictment of the process comes from an arbitrator. In a 1972 Columbia Law Review article entitled, "Binding Arbitration of Contract Terms: A New Approach to the Resolution of Disputes in the Public Sector," Joan McAvoy quotes a member of a three-man arbitration panel which resolved a dispute between the City of Marquette, Wisconsin, and its police union. This somewhat disenchanted arbitrator stated:

. . . Who elected the arbitration panel of which I am a part? To whom is this panel responsible or responsive? What pressure can the citizens of the City of Marquette bring to bear on the panel? How do they express their satisfaction or dissatisfaction with the panel's decision?

. . . With no reflection on their integrity intended, it is a simple fact that the two panel members who endorse the majority decision are not citizens of the City of Marquette nor even of Marquette County. And yet their decision, which has very far reaching implications, and will ultimately, no doubt, result in increased taxes for the people of the City of Marquette, is final and binding upon those people, their government and its employees.

VIOLATION OF ONE-MAN, ONE-VOTE

In addition to the previously stated concerns, it is also charged that arbitration suffers a constitutional flaw.

Compulsory arbitration statutes have been attacked as violating the Equal Protection Clause of the Fourteenth Amendment, via the one-man, one-vote principles enumerated by the United States Supreme Court in Gray v. Sanders, 372 U.S. 368 (1963) and Reynolds v. Sims, 377 U.S. 533 (1964). The argument is that the selection of an arbitrator by each party, and appointment of a third arbitrator by the first two, not only deprives citizens of an equal voice in selecting the panel, but removes from the public their right to equal representation in the decision-making process as well.

The one-man, one-vote argument has been generally rejected on the theory that an arbitration panel's responsibilities are not purely legislative in character. City of Amsterdam v. Helsby, supra. Using the argument discussed above that arbitration panels can only affect spending, and not actually determine costs, courts have generally regarded arbitration panels as non-legislative in nature and, therefore, isolated from the one-man, one-vote principles.

(Helsby, Wayne L., "The Constitutionality of Legislatively Mandated Binding Interest Arbitration: A Guide for the Practitioner," The Review, Spring 1980, Center for Employment Relations and Law, College of Law, Florida State University, Tallahassee)

The question, then, is whether arbitrators perform a legislative function and whether their decisions affect policy matters. Although the courts in previous cases have not accepted this contention, there is growing evidence that arbitrators do wander into legislative areas and do shape public policy.

The February 23, 1981, Government Employee Relations Report (GERR) includes an account of a recent Ohio case relating to arbitration. Judge Daniel B. Quillian of the Summit County Court of Common Pleas in Local 330, Akron Firefighters Association v. City of Akron overturned an arbitration award. GERR reports his reasons for doing so:

The power to fix the compensation of municipal employees is "one of the basic functions of municipal government," he finds. "It is not a mere incident of government but goes to the heart of the purpose of municipal government, that is to provide services to its citizens," the court finds.

Whether firefighters should work eight-hour shifts and 40 hours per week or 24 hour shifts and a 52 hour week is a "subject about which there can be honest debate." Judge Quillian finds changing the fire fighters' schedules is a "fundamental change in city policy which should not and cannot be brought about by the unreviewable decision of a single arbitrator purporting to construe an ambiguous clause in an agreement." (emphasis added)

Robert Chanin, former General Counsel of the National Education Association, has acknowledged the link between public sector collective bargaining and strikes and public policy matters. In an interview published in the February 28, 1981, Political Action Report, Chanin said, "the purpose of many strikes is not to

pressure governments into running higher debts, but rather to determine the priority of allocations - how available funds should be spent." If bargaining and strikes influence policy matters, then an arbitrator whose function is to resolve bargaining disputes and prevent strikes must surely deal with and issue binding decisions on policy matters.

In a February 1978 Labor Law Journal article entitled "Interest Arbitration in Public Employment: An Arbitrator Views the Process" Tim Bornstein, a practicing arbitrator, provided a clear and concise statement of the critique of binding arbitration.

Elected officials and political scientists warn that interest arbitration is inconsistent with the fundamental tenets of self-government. They perceive the interest arbitrator as one who has not been elected by the citizenry and is not accountable to them, who has not been appointed by the governor, and is not accountable to him, who is probably not a citizen of the community over whose fiscal fortunes he presides, and who may not even be a citizen of the same state; yet this stranger has the authority to fix wages, hours, working conditions for the community's employees and indirectly influence its tax rates and allocation of its resources.

Bornstein's comments include a remarkably candid recognition of the fact that this criticism has merit.

An interest arbitrator is no longer basically a judge, instead, his role is legislative. While it is sometimes thinly veiled in judicial guise, compulsory interest arbitration involves policy choices, a legislative function which requires the arbitrator to fashion a wage and benefit package for the parties based on his judgement of what is fair, reasonable and appropriate. (Emphasis added)

There is another force at work which increases the likelihood of an arbitrator exercising authority over policy matters - that is, performing a legislative function. As a bargaining relationship evolves, matters of policy are more likely to be decided at the bargaining table. A February 1979 Rand Corporation study, Organized Teachers in American Schools, noted this phenomenon.

The phase one analysis indicated that collective bargaining gains by teachers follow a distinct pattern. Teacher organizations first bargain over and obtain increases in salary and fringe benefits; they then move on to working

conditions and job security and only lastly, to issues of educational policy. Although noncompensation gains have not been universal, teachers have significantly improved their working conditions and increased their influence over school and classroom operations. Regulation of class size may be one of the most dramatic gains, but negotiated provisions covering assignment and transfer policy are another important collective bargaining achievement. At the same time, organized teachers now play a major role in the decisions about the length and composition of the school day, how teachers are evaluated, and how supplementary personnel are used in the schools. (Emphasis added)

If these policy issues are brought to the bargaining table and cannot be resolved there, they will be placed in the hands of an arbitrator for resolution. There now arises a situation in which an unelected, outside third party is rendering binding decisions on staffing requirements, class size, or any number of policy matters directly and significantly affecting the operations of a public enterprise.

Furthermore, to assert that arbitration has no policy implications, it is necessary to assume that an arbitration award affects only that group of employees and that bargaining unit at which it is directed and not any other program in the wide range of governmentally provided services and benefits. This view is, at best, naive. The public sector negotiation and arbitration processes do not occur in a vacuum. An arbitrator's decision on the wage and benefit package for one group of employees can have an immediate effect on other departments and other services, possibly forcing a reduction in the level of service or an alteration in their method or quality of delivery.

LEGAL CHALLENGES

The constitutionality of compulsory binding arbitration provisions have been challenged before state supreme courts fourteen times. In ten cases, the challenges were denied. Pennsylvania's police and fire arbitration statute was upheld because the state constitution had been amended to specifically provide for such provisions. In Michigan, only four of the seven Supreme Court Justices heard the challenge to that state's arbitration law. The Justices split two-two, and therefore, a lower court decision upholding the statute was allowed to stand. Connecticut's arbitration law was declared unconstitutional by the

Hartford County Superior Court, but the Supreme Court reversed the decision. The Connecticut Supreme Court did not address the constitutional questions raised in the lower court opinion, but reversed on the grounds that the plaintiffs, eight municipalities and an individual taxpayer, lacked standing.

The supreme courts of four states - South Dakota (1975), California (1976), Colorado (1976), and Utah (1977) - have held compulsory binding interest arbitration to be unconstitutional. In all of these cases, the courts have handed down remarkably similar decisions, finding arbitration to be an unconstitutional delegation of authority to an unaccountable third party.

The Colorado Supreme Court stated:

The trial court ruled that the amendment provisions concerning compulsory binding arbitration constitute an unlawful delegation of legislative power. This is an issue of first impression in Colorado. We are persuaded that this view is correct. . . . A contrary holding in our view, would seriously conflict with basic tenets of representative government. Fundamental among these tenets is the precept that officials engaged in governmental decision-making (e.g., setting budgets, salaries and other terms and conditions of public employment) must be accountable to the citizens they represent. Binding arbitration removes these decisions from the aegis of elected representatives, placing them in the hands of an outside person who has no accountability to the public. (Greeley Police Union and Donald O'Leary v. City Council of Greeley, et al; Colorado Supreme Court, Case No. 26992, Aug. 23, 1976)

In the previously mentioned Connecticut case, Judge Joseph H. Goldberg of the Hartford County Superior Court wrote:

The Court concludes that the Act's compulsory arbitration provisions, which delegate legislative power affecting municipal affairs to a politically unaccountable body without appropriate safeguards against arbitrariness, are so unreasonable and capricious as to violate the due process clauses of both the Connecticut and United States Constitutions. (Town of Berlin, et al v. Frank Santaguida, et al; Hartford County Superior Court, June 26, 1978)

SUMMARY

In summary, one of the most succinct enumerations of the deficiencies of compulsory binding arbitration was authored by Sam Zagoria, well-known labor

relations expert, supporter of collective bargaining in the public sector, and former director of the U.S. Conference of Mayors' Labor Management Relations Service. In the April 1977 LMRS Newsletter, Zagoria listed the problems associated with the use of arbitration:

- (1) It discourages honest, good-faith collective bargaining. As long as this extra step is available, there is a possibility that a party will hold back on the compromise-making accommodations on which effective bargaining relies. . .
- (2) It places far-reaching power in the hands of a person, not elected, not accountable to elected officials and not necessarily a resident of the community or even the state involved. He is unlikely to be trained or experienced in municipal finances or administration. Yet his decision constitutes, nonetheless, a mandate on the community leadership, which can force substantial changes in taxation, public policy priorities and the ability to manage the work force . . .
- (3) The arbitrator is an ad hoc appointee with no continuing responsibility to make an award that is workable as well as just. There is no year-round accountability, contrary to the principles of representative government and sound public administration . . .
- (4) It is probably impossible to make an award for one group of workers without affecting other groups of municipal workers, yet an arbitrator has neither the authority nor responsibility to examine their situation. The 'ripple' affect of his decision could have a tidal wave effect on the city administration.
- (5) Contracts are not negotiated in isolation from past or future arrangements. It is difficult to make an award for one contract without dealing with how it fits generally into long-term labor relations, into future city plans, some of which are not yet formulated or expressed . . .
- (6) The process is unbalanced since it makes a no-risk or low-risk step available to a union or employee organization. Rarely will an arbitrator even consider awarding a union less than what management has already offered.
- (7) Arbitrators . . . tend to provide something for each side in their award regardless sometimes of the actual merits involved. Some cynics suggest this may be part of an arbitrator's job-preservation program' . . .

- (8) Arbitration is an expensive add-on to the bargaining process. There are the steadily rising fees of arbitrators and now a growing use of economic consultants to prepare a case and accompanying exhibits, and as one side goes down this path, the other almost has to follow in self-defense.
- (9) It is a time-consuming process. . . . The Massachusetts League of Cities and Towns found the average length of time consumed in the arbitration phase alone was more than a full year.
- (10) There are serious questions of constitutionality

RIGHTS OR GRIEVANCE ARBITRATION

Rights or grievance arbitration, as was noted earlier, is a process for resolving disputes over the interpretation, meaning or application of an existing collective bargaining contract. The typical grievance procedure involves several progressive steps through an agency's hierarchy. The final or terminal step would be binding arbitration. As is the case with interest arbitration, a third party neutral -- grievance arbitration usually employs a single arbitrator -- renders a decision that is binding on both parties.

It is the grieving party, the union, which controls the decision to pursue a grievance through the various steps, including the decision to submit to arbitration. As with interest arbitration, it is the union rather than the employer which will invoke arbitration.

There are two ways by which arbitration is provided as the terminal step of a grievance procedure -- by statute or as part of the negotiated grievance procedure found in the contract. Many public sector collective bargaining statutes mandate arbitration of grievances.

EARLY CONCERN UNHEEDED

As the private sector bargaining model was put to use in the public sector, grievance arbitration was generally accepted as part of the process. Gerald M. Pops, in his book Emergence of the Public Sector Arbitrator, has noted that this transfer was accomplished with little questioning:

The process of transferring their function from the private to the public sector has, on the whole, been undertaken with little forethought as to the difference between private and public employment. In fact, the transition has occurred almost automatically as the institution of collective bargaining has taken root in public employment. There has been an implicit assumption that, although the institution of collective bargaining and the employment relationship have a somewhat different character in the two environments, the grievance arbitration process -- and the arbitrator -- would and should perform the same function in the same way.

There were some who raised questions relatively early in the development of collective bargaining in the public sector. Pops quotes arbitrator Peter Seitz, speaking before a 1967 seminar:

Arbitration, I am persuaded, is a more sensitive plant than is generally appreciated. Its utility as an institution can easily be impaired or even destroyed by freighting it with missions it is ill-equipped to discharge; by making it an instrument of national, state or local public policy; or by diluting its special private and voluntary character. Yet there are many well-intentioned persons who believe that if arbitration worked well in adjudicating private grievances, it should be a nostrum and cureall for a variety of other diseases. This gives me serious concern.

In their 1971 Brookings Institution study The Unions and the Cities, Wellington and Winter expressed concern over the importation of grievance arbitration to the public sector:

One of private management's major complaints about grievance arbitration is that, because it tends to accommodate interests as well as adjudicate rights, unions frequently gain what they have not been able to win at the bargaining table....

How frequently arbitrators in fact do what employers say they often do is difficult to judge. But it does happen, because unions press for it and because grievance arbitration involves, to some extent at least, the accommodation of interests as well as the adjudication of rights. Nor, in the private sector, is there much check on the arbitrator. The scope of judicial review has been sharply limited by the Supreme Court.

Whatever one's judgement on the wisdom or unwisdom of accommodation in private sector grievance arbitration, it is dangerous business in the public sector. Because the scope of bargaining has vast social implications in public employment, arbitrators should not be allowed to extend the area of union control through the settlement of grievances.

Yet these warnings went unheeded by legislators and public officials or were deftly parried by the unions that sought the extension of grievance arbitration

to the public sector. The defense of the process was a simple and, initially, a convincing one: the arbitrator does not create the terms of a contract but merely interprets language previously agreed to by the parties:

IMPLICATIONS FOR POLICY DETERMINATION

As the collective bargaining process has evolved in the public sector, it has become apparent that the grievance process involves matters of public policy. For one thing, the collective bargaining agreement is a statement of public policy having the force of law. This is a point the unions concede. In fact, they have used this argument when seeking judicial enforcement of contract terms.

The previously cited Rand Corporation study of collective bargaining by teachers pointed out that, as the process develops, the scope of bargaining -- those items which are included as part of the contract -- broadens to include more and more matters of public policy. It can safely be assumed that this same evolutionary pattern would occur in other areas of public employment. As contract language expands in this fashion, arbitrators will increasingly be put in the position of rendering decisions on issues of public policy.

Defenders of grievance arbitration, however, will argue that the arbitrator's role remains interpretative rather than formulative. If there is a problem here, it is with the scope of bargaining not the grievance procedure. The arbitrator is still only interpreting contract language not making policy.

But as the grievance arbitration process is examined further, this defense begins to lose credibility. For one thing, Wellington and Winter's concern about the grievance arbitrator's tendency "to accommodate interests" appears to have been well-founded. Many public officials feel the unions seek, often successfully, to use grievance arbitration as an extension of the negotiating process. One school board official with long experience in public sector labor relations has observed, "Unions have probably gained more through grievance arbitration than they have at the bargaining table."

At the bargaining table, unions seek to expand the number and types of items that are grievable and, hence subject to arbitration. A reason for doing this, it may be argued (as did Wellington and Winter), is to create a situation "through which the union extends its area of control over issues that belong to the political process."

TO INTERPRET IS TO FORMULATE

A bargaining demand that surfaced recently in Oregon provides illustration. A teacher union sought contract language that would have made alleged violations of school board policy subject to grievance arbitration. Fortunately, the Oregon Employment Relations Board refused to require negotiations on the demand. In rejecting the union position the Board pointed to the policy implications. The majority opinion stated:

We emphasize that a proposal's effect in restricting educational policy is not significantly changed by whether the proposal would require the two parties to bargain those policy matters or whether it would require the policy maker to submit its decisions to the scrutiny of a third party after they are made. In either case, the effect is to restrict the policy making role which the employer was elected to fulfill...

Could such a third party "review" affect the substance of these permissive matters? We believe it not only possible, but probable. An arbitrator cannot "rule" on an alleged policy/rule violation without first deciding what the particular policy or rule does, or does not require (i.e., without determining the substance or content of the language at issue). In so deciding, the arbitrator gives a policy its meaning -- a meaning which might well be at variance with the district's own interpretation.

At the crux of this issue is an inescapable point of procedural reality: the act of interpreting a law or contract language has the ultimate effect of formulating that law or language. Myron Lieberman, in Public Sector Bargaining, makes this point:

In a general way, policymaking in grievance arbitration is analogous to judicial legislation. Judges frequently have to interpret and apply legislation. When this happens, the judges are in effect acting as lawmakers. The argument over whether they are merely interpreting the law or formulating the law is largely a semantic issue... The fact is, however, that the power to interpret the law is also the power to formulate the law.

By the same token, the power to issue binding interpretations of collective agreements is also the power to formulate such agreements... And since such agreements constitute public policy for their duration, the power to make binding interpretations of them is a de facto power to make public personnel policy. A crucial difference, however, is that arbitrators instead of judges are making the policy.

Placing this kind of decision making power in the hands of an individual with no political accountability does violence to the concept of democratically constituted representative government.

CONCLUSION

In summary, the overwhelming weight of evidence holds binding arbitration, both interest and grievance, to be an unsatisfactory method of resolving labor disputes in the public sector. The process is inordinately expensive to governments both in terms of eventual settlements and administrative costs. Arbitration contains a built-in-bias toward the union position.

Most importantly, compulsory binding arbitration does violence to the concept of representative government. Turning over decision making authority to an outside third party accountable to no one, deprives citizens of their right to a voice in the running of their government. In a democratic society, this is intolerable.

APPENDIX I

The following nineteen state have compulsory binding arbitration legislation:

1. ALASKA - compulsory for police, fire, correctional and hospital unions which are denied the right to strike. Unions granted limited strike rights are also subject to compulsory arbitration when those strikes are enjoined.
2. CONNECTICUT - compulsory for municipal and teacher unions. For municipal unions a three-member panel engages in issue-by-issue final offer arbitration 90 days after expiration of current agreement. For education unions, a three-member panel selects between last best offers of both sides 20 days before school budgets are due at local boards of finance.
3. HAWAII - disputes involving firefighters are submitted to compulsory arbitration if differences persist 15 days following declaration of an impasse. A three-member panel selected in the traditional manner shall render a binding decision on a total package final offer basis.
4. IOWA - binding arbitration for all public unions at the request of either party if an impasse persists following fact-finding. The parties may use a single arbitrator or a three-member panel. The arbitrator or panel may choose on an issue-by-issue basis from among the final offers of each party or the fact-finder's recommendation.
5. MAINE - statutes in Maine cover state unions, municipal unions (including teachers) and University of Maine employees. They provide for arbitration of unresolved issues remaining after mediation and fact-finding. If both parties can agree, a single arbitrator may be used. Otherwise, a three-member panel picked in the traditional manner will resolve the dispute. The award is advisory on economic matters and binding on all others.
6. MICHIGAN - binding arbitration covers police, firefighters, state police and certain emergency medical personnel unions. Impasses not resolved by mediation or fact-finding within 30 days are submitted to a three-man arbitration panel. A decision is rendered on an issue-by-issue final offer basis.
7. MINNESOTA - arbitration for all public unions. Upon declaration of an impasse, parties submit final offers of unresolved items to a single arbitrator if they so choose or to a three-member panel. To select a panel, the parties alternately strike names from a list of seven arbitrators until three remain. Teacher unions are granted a choice between striking or arbitration. The remaining public unions are permitted to strike only if the employer refuses to submit unresolved items to arbitration or refuses to abide by an arbitration award.
8. MONTANA - legislation in 1979 applicable to firefighters and some state employee unions. Either party may request last best offer, issue-by-issue arbitration.
9. NEBRASKA - all public employee unions covered with a unique impasse resolution device. A Court of Industrial Relations considers all disputes and issues a binding decision. The court is a permanent body whose members are employed by the state.
10. NEVADA - covers local government employee unions, including teachers and state nurses unions, and provides that the parties may agree in advance to make all or parts of a fact-finder's report binding.

11. NEW JERSEY - police and firefighters unions are covered by compulsory arbitration. The parties have a choice on the form of arbitration to be used, either a single arbitrator or a panel. Arbitration can be conventional or final offer, and final offer may be issue-by-issue or total package.
12. NEW YORK - police and firefighters unions are covered by compulsory arbitration with a conventional, three member panel. These provisions are renewable on a two year basis. The present extension expires July 1, 1983.
13. OREGON - compulsory arbitration for police, firefighters, and prison guard unions who are legally prohibited from striking. The parties may choose a single arbitrator or a panel of three selected by striking names from a list of seven. Arbitration is conventional. In cases where otherwise legal strikes are enjoined, remaining unresolved issues must be submitted to arbitration.
14. PENNSYLVANIA - compulsory arbitration for police, firefighters, guards at prisons and mental hospitals and court employees. Each party selects one member of the three-man panel, and these two select the chairman. Arbitration is conventional and is invoked at the request of either party or if no agreement is reached after 30 days of negotiations.
15. RHODE ISLAND - several statutes provide for arbitration for all public unions. In the case of police and firefighters, all issues unresolved after 30 days of negotiations are submitted to a three-member panel for conventional arbitration. Arbitration is instituted for others if mediation fails to settle all impasses. For state employee unions this is compulsory. For municipal employees and teachers unions it is instituted at the request of either party.
16. VERMONT - compulsory arbitration for municipal employee, police, and firefighter unions on a local option basis. Municipalities may opt by a referendum vote to provide the binding procedures. Arbitration is instituted if an impasse persists 20 days following a fact-finder's report. The three-member panel engages in conventional arbitration.
17. WASHINGTON - compulsory for uniformed personnel if an impasse persists 45 days after mediation and fact-finding commences. A three-member panel engages in conventional arbitration.
18. WISCONSIN - compulsory binding arbitration for municipal unions. At the request of either party, disputes involving police and firefighters unions are submitted to compulsory binding arbitration. A single arbitrator is selected by each party alternately striking names from a list of five. Unless conventional arbitration is specified by the parties, the decision will be rendered on a total package final offer basis. Compulsory binding arbitration for municipal employees created by 1979 legislation allowing parties to agree to binding arbitration or strike option. A single arbitrator, selected as above, decides between final offers. The statute will expire July 1, 1987.
19. WYOMING - the firefighter bargaining statute provides for compulsory arbitration if no agreement is reached within 30 days. Arbitration is by a three-member panel.

APPENDIX II

Compulsory arbitration statutes were overturned by the supreme courts of the following states:

CALIFORNIA-Barry Bagley, et al. v. City of Manhattan Beach, et al.; Supreme Court of California, Case No. L.A. 30523, September 16, 1976.

COLORADO-Greeley Police Union and Donald O'Leary v. City Council of Greeley, et al.; Colorado Supreme Court, Case No. 26922, August 23, 1976--and later in City of Aurora v. Aurora Firefighters' Protective Association, et al.; Colorado Supreme Court, Case No. 27227, August 2, 1977.

SOUTH DAKOTA-City of Sioux Falls v. Sioux Falls Firefighters Local 814, Fraternal Order of Police, Lodge No. 1, et al.; South Dakota Supreme Court, Case Nos. 11406, 11411, and 11424, October 9, 1975.

UTAH-Salt Lake City, et al. v. International Association of Firefighters Locals 1645, 593, and 2064; Utah Supreme Court, Case No. 14689, April 25, 1977.

Uhlman: Rather a Strike Than . . .

BY MARIBETH MORRIS
P-I Labor Writer

Mayor Wes Uhlman said yesterday he'd rather go through a strike by public employees than wind up with a binding agreement made by an "irresponsible" arbitrator whose decision could bankrupt the city.

Uhlman, speaking here at a forum discussion on the right of public employees to strike, emphasized he wasn't supporting workers' walkouts by any means.

"If the rules are right, binding arbitration is the answer," the mayor said, "but only in cases where the public's health and safety is at stake."

Uhlman cited a case involving a California city which tried to reduce the firefighters' force by 36. An arbitrator not only cut the work week but added 66 additional men.

"This cost the city \$3 million more a year and other services had to be cut back because of this irresponsible decision."

Uhlman referred often to the 100-day City Light strike this winter after which, he said, neither side came out the "clear and total winner."

The mayor termed

prohibition of public employee strikes as "not reasonable, paternalistic and unfair."

At the same time, however, Uhlman said cities cannot afford to give in to "outrageous demands."

"New York City found that the chaos of a strike was nothing compared to the chaos of a pending bankruptcy," Uhlman said.

A gentlemen's debate on public employee strikes preceded Uhlman's presentation at the forum, co-sponsored by the American Arbitration Association and the Seattle-King County Municipal League.

George Masten, executive director of the Washington Federation of State Employees, defended the "inherent right" of public employees to strike.

"Public employees have a right to withhold their services to pursue their goals," Masten said. "There is the hue and cry that the people will suffer."

"The suffering is no different if a strike is called by private doctors or public doctors."

Seattle management consultant C. Carey Donworth took the opposing side saying public employees shouldn't

have the legal right to strike because the public ends up being the principal victim.

Legalizing public employee strikes will increase strike activity and the public will suffer even more, Donworth said.

"If you legalize murder, you will have more murders," Donworth said. "It's that simple."

Seattle Post-Intelligencer March 7, 1976

"Best Last Offer" Referendum—A Viable Alternative

By Joseph H. Weil

In late 1975, before his appointment as Secretary of Labor, W. J. Usery, Jr., then director of the Federal Mediation and Conciliation Service, anticipated a crucial year in 1976 for labor relations when he said, "In the public sector, we are sitting atop a tinder box."¹ He referred to the difficulties in labor relations in the public sector and added, "Such ingredients are a recipe for chaos." The potential for conflict in public sector labor relations during 1976 was also pointed out by representatives of both labor and public management.²

In June of 1976 the United States Supreme Court conclusively dealt with the question of the Federal Government's power to regulate the relationship between state and local governments and their public employees, as raised by the challenge to the 1974 amendments to the Fair Labor Standards Act by the National League of Cities.³ A majority opinion specifically receded and overruled the Court's prior opinion which upheld earlier FLSA provisions as they applied to schools and hospitals,⁴ stating that the earlier decision in *Wirtz v. Maryland* may no longer be regarded as "authoritative."

Mr. Justice Rehnquist, speaking for the majority, held

that insofar as the challenged amendments operate to directly displace the States' freedom to structure integral operations in areas of traditional governmental functions, they are not within the authority granted Congress by Art. I, §8, cl. 3.

and further stated:

We agree that such assertions of power, if unchecked, would indeed allow "the National Government [to] devour the essentials of state sovereignty."

The broad language of this decision in placing a real limit on the power of Congress to control state and local government employee relationships effectively blunts the drive in Congress for a federal public employees labor relations law and "may bring states and cities additional benefits in their labor-relations battle with public-employee unions."⁵

It now appears that neither labor nor public management is satisfied with the existing formulas that are presently provided by most state laws.⁶ Although several states have yet to enact legislation dealing with labor relations in the public sector,⁷ most have adopted either "meet and confer" laws such as Missouri,⁸ local option plans such as California,⁹ or compulsory bargaining schemes such as the Florida law¹⁰ which contains complex provisions for impasse resolution that ultimately leave final determination as a unilateral decision of the public employer.¹¹ A few states have experimented with the concept of compulsory arbitration in public sector collective bargaining,¹² or the possibility of permitting strikes and job action on a limited basis within the public sector.¹³

George Meany and the Public Employees Department (PED) of the AFL-CIO take the position that strikes should be legalized in the

public sector,¹⁴ although Jerry Wurf, president of the American Federation of State, County and Municipal Employees (AFSCME), the AFL-CIO's largest union of public employees, stated in a recent interview:

As for all the other fields of public employment, our Union is willing to agree in advance that if we get into bargaining impasse we will go to arbitration voluntarily, rather than be forced into it as a matter of law.

I think the wage-arbitration system in the steel industry offers an excellent example that can be followed in the public services.¹⁵

The validity of binding compulsory arbitration laws in the public sector is presently in a state of confusion and somewhat in doubt.¹⁶

The Florida law, Part Two of Chapter 447, Florida Statutes, known as the "Tucker Act" is illustrative of the approach taken by a great many of states in regulating collective bargaining in the public sector.¹⁷ This law provides an illusory equality of bargaining by introducing the concept of a special master,¹⁸ whose function is that of both fact-finder and arbitrator, but whose recommendations are without real force or effect. The recommendations of this special master must be considered by the legislative body of local government at a public hearing.¹⁹ Compliance by the legislative body with this statutory requirement has not engendered any great interest on the part of the general public, and as a result, such a hearing has no effect on the parties except perhaps to encourage indirect political pressure which does not serve the public interest.²⁰

Most state laws provide some prohibition against "strikes" or "job actions," such as the Florida law which states:

No public employee or employee organization may participate in a strike against a public employer by instigating or



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supporting, in any manner, a strike. Any violation of this section shall subject the violator to the penalties provided in this part.⁵¹

Such "no strike" provisions do not prevent labor disruptions in the public sector, for if the employee organization remains dissatisfied, even after the impasse is resolved, it may still resort to the "illegal strike."⁵² Generally when such "illegal strikes" are settled, one of the conditions demanded by the employee organization is that the public employer take no retaliatory action against the union for participating in an illegal strike.⁵³ Thus, the statutory prohibition against strikes has little apparent impact on the incidence of strikes in the public sector⁵⁴ and the question of how such "no strike" provisions of the law should be enforced has recently been addressed in Florida by the appellate courts in the litigation that resulted from the alleged illegal strike of Broward County school teachers in late 1975.⁵⁵

Disregarding the problem of the "illegal strike," it now appears that the majority of the general public supports the position taken by most public employers that strikes in the public sector should not be permitted since the concept of "public service" of the government, employees and the plight of the cities has been a strong factor in the current taxpayers' revolt.⁵⁶ Therefore, in view of the unacceptability of "strikes," "job actions" or other disruptions of service in the public sector, labor, management and the public have all sought some alternative procedure for impasse resolution.⁵⁷

Public employers are almost unanimous in their opposition to legally binding compulsory arbitration for impasses in the public sector.⁵⁸ They take the position that such arbitration is really only binding on the public employer, as the employees may still resort to "illegal strikes" or "job actions" if they are not satisfied with the arbitrators' award.⁵⁹ The principal objection of the public employer to compulsory binding arbitration is that public officials lost control of policy making and their ability to determine the priorities in dealing with the problems of local government.⁶⁰ Thus when compulsory binding arbitration is used as the method for

impasse resolution, decisions affecting the needs of local government are made by "labor experts" rather than by elected public officials, and the decisions result from adversary proceedings rather than from the political process.⁶¹

Best Last Offer Concept

This objection would apply to both conventional arbitrational awards, as well as "best last offer" arbitration.⁶² The "best last offer" concept has been introduced recently as a variation of traditional arbitration proceedings. Since the arbitrator is "frozen" and must accept either one of the two "best offer" proposals that are submitted to him, it places pressure on each of the parties to place before the arbitrator his most reasonable proposal.⁶³

As an alternative to either illusory collective bargaining, compulsory arbitration, or "strikes and job action," the newest approach appears to be a referendum election to resolve the issues. Such a procedure has been promulgated recently by one of the outstanding experts⁶⁴ in public sector collective bargaining. The proposal is to give

either party by law the right to take the contested issue to public referendum, hitching the fact-finders' recommendation on the next regular or special election ballot, whether it is for choice of municipal officials, a decision on bond issues, selection of state officials or similar public referendum.⁶⁵

A related new concept recently adopted by the City of Englewood, Colorado, provides:

RESOLUTION OF IMPASSES COMMISSION RECOMMENDATIONS VOTER APPROVAL

If the appropriate city representative and the representative of a certified employee organization reach an impasse, the matter shall be submitted to the commission for fact-finding and mediation. The commission may at its discretion appoint or employ one or more mediators or fact-finders to assist the commission or the parties involved.

Within thirty (30) days after submission to the commission for fact-finding and mediation, the commission shall render its findings and recommendations to both the city and to the affected employee representation unit.

Should either the city or the employee representation unit decline to accept the recommendation of the commission, or to otherwise agree, then either of said parties shall within thirty (30) days notify the council of its decision.

Within thirty (30) days after written notice to the council by either party of its refusal to

accept the recommendations of the commission, the council shall call a special municipal election by ordinance or resolution, submitting the recommendation of the board to a vote of the qualified electors of the city for their approval or disapproval. Furthermore, if requested to do so by the appropriate employee unit, the city council shall submit the proposal of the employee unit at the same election. The city council may, at its discretion, submit its proposal at the same election.

The proposal receiving the highest number of votes, if approved by a majority of the qualified electors voting thereon, shall be deemed approved.

Said election shall be held consistent with the provisions of Article II, Section 14 of this charter.

Expenses of any special municipal election called under this section, shall be borne by the city. All fees and expenses by the board of its appointees incurred hereunder shall be shared equally by the city and the appropriate employee representation unit.

The city shall furnish meeting space and recording and transcribing services when requested for such proceedings.⁶⁶

A unique flexibility is available under such a "best last offer" referendum provision, not only to the employee organization and public management, but also to the general public. Under the terms of such a provision, the public must, by its election, determine a choice, which should be binding on both of the parties. Both sides can attempt to influence the result of the referendum through the traditional political process of education and campaigning. Ultimately, the taxpayer who pays the bill will have the right to make the choice.⁶⁷

More recently, in San Francisco, "a citadel of trade-unionism for four decades ... the old alliance between city hall and the building trades came undone in a strike by ten craft unions that brought many city services to a halt and prompted labor leaders to threaten a general strike by all union members."⁶⁸ However, it was clear that the elected officials were facing a taxpayers' revolt and they were seeking new solutions.

In November of 1975 the electorate amended the city charter by rescinding the automatic "prevailing wage" for craft unions, removing from the mayor the authority to unilaterally negotiate with city employees and authorizing future salaries and benefits to be negotiated by the board of supervisors.⁶⁹ In the face of the strike by the craft union, the board of supervisors used its new authority to regain control by

considering the "best last offer referendum" concept.

When public sector labor disputes reach an impasse, "last best offer referendum" offers an alternative to strikes and compulsory binding arbitration...

When An Impasse Occurs

A draft charter amendment which was presented before the board of supervisors would enable a majority of the board to submit the question to the voters if the employees and public management are unable to agree.⁴¹ This proposed amendment provides that in the event of an impasse:

If prior to April 15, a majority of the board of supervisors request that the schedule of compensation based on the aforementioned last demands of recognized employee organizations be submitted to the voters, a special election shall be called for said purpose and shall be held not less than 30 days from the date of the call. At the special election the ballot shall contain the following two alternatives:

1. Approval of the schedule of compensation based upon the employee organization's last demands.

2. Disapproval of the schedule of compensation based upon the employee organization's last demands.

If a majority of the valid votes cast in said special election favor paying the additional rates set forth in the schedule of compensation based upon the last demands of the recognized employee organizations which engaged in the meet-and-confer process, it shall be the duty of the board of supervisors to amend the salary standardization ordinance for the ensuing fiscal year to reflect said increased rates and the same shall be in lieu of said annual compensation and notwithstanding any other provisions of this charter to the contrary. Said rates shall become effective at the beginning of the succeeding fiscal year.⁴²

The strategy of the San Francisco Board of Supervisors was to place on the June 1976 primary election ballot two propositions which would provide "a small cost-of-living increase" to the striking craft unions over a two-year period and embody the "last best offer" of the Board of Supervisors.⁴³

The pressure of the impending June 8, 1976, referendum election proved sufficient to force unions to give up the strike and submit the issue to a fact-finding board of 11 members, consisting of five labor representatives and five appointed

by the supervisors and the mayor.⁴⁴ The settlement was reached on Saturday, May 8, 1976, the last day the supervisors could remove the referendum questions from the ballot. It resulted in victory for the Board of Supervisors.⁴⁵ Although in removing the issues from the ballot, the supervisors did not in the final analysis use the "best last offer referendum," the action did prove a most effective deterrent in allowing management to successfully conclude the strike.⁴⁶

Advantages of Best Last Offer

Although nothing contained in the proposal itself will prevent "illegal strikes or job action" by employee organizations that are dissatisfied with the result of the referendum, as a practical political matter, it will be mandatory that they abide by the result in order to preserve their future political credibility. A condition precedent for placing the "last best offer" of the employees upon the ballot would be an agreement to be bound by the result of the referendum. Another advantage of the proposal is that each of the parties would be able to "frame" his own question, as opposed to a referendum on a special master's or arbitrator's recommendation which could possibly cause the parties to contest the language in which the question was presented.⁴⁷

The most telling argument against this procedure is that the public, as the ultimate taxpayers, will refuse to approve any proposal, no matter how reasonable. Our experience, at least in the City of North Bay Village, proves that this is not the case. In 1974, a proposed two-year contract between the city and the Fraternal Order of Police was tied to a referendum election involving an increase in the millage in order to fund the agreement.⁴⁸ After a spirited public debate, but with the support of both the political leadership of the community and the employee organizations, the agreement was ratified and a millage increase was authorized by the voters at a special election.⁴⁹

As the legislatures of many states, including Florida, will be addressing the problem of impasse resolution of public sector labor disputes in the very near future, it is suggested that there is a viable alternative to strikes and job actions

on the one hand and compulsory binding arbitration on the other hand. This alternative, last best offer referendum, seems to be molded for public sector collective bargaining and should be given a long and thorough look by the lawmakers.

FOOTNOTES

¹ *Big Drive Ahead for Payraises*, U.S. News & World Report, January 5, 1976, at 62.

² *Id.*, where a spokesman for AFSCME stated: "We're girding ourselves, and developing strategies to assist our locals as they go into negotiations," and San Zagaria, labor relations consultant for the National League of Cities and Director of the Labor Management Relations Service, who stated that 1976 will be "Not better but worse" for government bargaining.

³ *National League of Cities v. Usery*, ___ U.S. ___, 48 L.Ed. 3d 945, 98 S.Ct. 2405, 44 U.S.L.W. 4074 (1976).

⁴ *Wirtz v. Maryland*, 392 U.S. 183 (1968) upholding the validity of earlier amendments to the Fair Labor Standards Act.

⁵ *The Wall Street Journal*, June 25, 1976, at 3.

⁶ *See, Backlash Against City Workers*, U.S. News & World Report, December 22, 1975, at 31 and *Public Workers Under Fire*, Interview with Jerry Wurf, President AFSCME, U.S. News & World Report, December 29, 1975, at 49 and an interview with John Dunlop, former Secretary of Labor, U.S. News & World Report, December 15, 1975, at 78.

⁷ "Whatever the diminution of bargaining prospects in New York City, we have seen the enactment in 1975 of additional statutes, which bring to over forty the number of states that by statute, judicial determination, or local ordinance, authorize some form of collective bargaining. Thirty of those states have fact-finding procedures, and twenty states have legislated arbitration for some or all of their public employees: Alaska, Connecticut, Iowa, Maine, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New York, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Vermont, Washington, Wisconsin and Wyoming. In seven states the strike, subject to limitation, is legalized or authorized: Alaska, Hawaii, Minnesota, Montana, Oregon, Pennsylvania and Vermont. Thus, we see that collective bargaining in public employment is here to stay and is likely to survive the current fiscal and political crisis."

Quoted from Anderson, *New York City Fiscal Crunch Rattles Labor Relations*, LABOR-MANAGEMENT RELATIONS SERVICE (LMRS) NEWSLETTER, Vol. 7, No. 1, January 1976.

⁸ *VERNON'S ANNOTATED MISSOURI STATUTES, Public Officers*, §105.500 et. seq. Provisions of statute excluding police officers from Collective Bargaining upheld *Vorbeck v. McNeal*, 407 F. Supp. 733, (E.D. Mo. 1976); *Aff'd* ___ U.S. ___, 40 L.Ed2d 1180, 98 S.Ct. 3180 44 U.S.L.W. 3734 (1976).

⁹ Chapter 10 *WEST'S ANNOTATED CALIFORNIA CODES*, Government Vol. 32 §3204.5 et seq. is basically a "meet and confer" law with an additional local option provision contained in §3500 as follows:

"Nor is it intended that this chapter be binding upon those public agencies which provide procedures for the administration of employer-employee relations in accordance with the provisions of this chapter."

Thus under the California law there are numerous and varied statutory plans for dealing with public employee labor relations established by almost every individual public employer. The law should be designated as "authorization to negotiate."

¹⁰ FLA. STAT. Ch. 447, Part II, originally enacted as Chapter 74-100, Laws of Florida.

¹¹ FLA. STAT. §447.403(c).

¹² Report of the Labor Relations Committee, 30 NIMLO MUNICIPAL LAW REVIEW 11.16 (1975).

¹³ An example of this type legislation is found in the 1972 Alaska Public Employment Relations Act, A.S. 23.40.070-23.40.260 (1972).

¹⁴ LMRS NEWSLETTER, Vol. 6, No. 11, November 1975.

"The AFL-CIO, after a floor fight at its annual convention, last month endorsed Federal Legislation to provide collective bargaining rights for all public employees, including the right to strike. A lone effort was made by Jerry Wurf, president of the American Federation of State, County and Municipal Employees, to substitute compulsory arbitration in disputes involving police and firemen, but the amendment was 'resoundingly defeated,' according to the New York Times. Wurf urged that failure to adopt such an amendment would doom federal or state legislation since legislative bodies would not vote to give public safety employees a legal right to strike. He said 'The time has come to recognize some harsh realities. What we are in effect doing by insisting that there is an unlimited right to strike by public safety officers is in effect saying we don't want a Federal collective bargaining law.'"

The President of the AFL-CIO, George Meany, and others, responded Meany: "I hope I never see the day that the AFL-CIO, sitting in convention, will ask Congress to impose compulsory arbitration on anybody, anywhere, at any time." The President of the Service Employees International Union, George Hardy, said, "We must always have the right to strike. Without it, you have no freedom. The right to strike is basic, fundamental to the labor movement."

¹⁵ Interview with Jerry Wurf, U.S. NEWS & WORLD REPORT, December 29, 1975, at 50, and note 14, *supra*.

¹⁶ Compulsory binding interest arbitration statutes have been upheld in New York: *City of Amsterdam v. Hefsky*, 37 N.Y. 2d 19, 371 N.Y.S. 2d 404, 332 NE 2d 290 (Ct. App. 1975); *Rhode Island City of Warwick v. Warwick Regular Firemen's Ass'n*, 106 R.I. 109, 256 A.2d 206 (1969); *Wyoming State v. City of Laramie*, 437 P.2d 295 (1969) and *Maine City of Beddeford v. Beddeford Teachers Ass'n*, 304 A.2d 367 (1973). The Wyoming and Maine cases, do not really deal directly with the "delegation of power" issue directly as the New York and Rhode Island cases do. The most recent pronouncement of the Michigan Supreme Court is not conclusive, *Dearborn Fire Fighters Etc. v. City of Dearborn*, 394 Mich. 290, 231 N.W.2d 296 (1975). The majority of the court cast a cloud upon the validity of the Michigan law MCL §463.321 §17.435 (31) *et seq.* Mich. Stats Anno. based upon its failure

to require political accountability of the arbitrators. The 1976 Michigan Legislature enacted Public Act No. 84 amending the Compulsory Arbitration Law to meet the requirements of the criteria established by the court; see Mich. Stats Anno; Current Material, Stats p. 416. Pennsylvania validated the concept of binding arbitration by a 1967 amendment to the state constitution that is now incorporated into Article III, Section 31 which specifically authorized that such arbitration findings were binding. The South Dakota Supreme Court held that compulsory binding arbitration was unconstitutional and struck down the entire law providing for arbitration of police and firefighters labor disputes in *City of Sioux Falls v. Sioux Fall Firefighters*, 234 N.W. 2d 35 (1975).

¹⁷ The Tucker Act was originally adopted as Chapter 74-100, Laws of Florida, and is now contained in FLA. STAT. §447.301-.607 (1975).

¹⁸ FLA. STAT. §447.403-.407 (1975).

¹⁹ FLA. STAT. §447.403(b).

2. The employee organization may submit to such legislative body its recommendations for settling the dispute:

3. The legislative body or duly authorized committee thereof shall forthwith conduct a public hearing at which the parties shall be required to explain their positions with respect to the report of fact-finding board; and

4. Thereafter, the legislative body shall take such action as it deems to be in the public interest including the interest of the public employees involved.

²⁰ From the standpoint of fostering a viable collective bargaining system, bypassing is undesirable in several respects. Initially, it evidences a breakdown in the bargaining system and, by shifting the attention of the parties from bargaining to political involvement, it makes future negotiations more difficult. On the union side, if lobbying meets with greater success than negotiation, the union will be encouraged to abandon bargaining entirely and rely solely on political action. On the management side, bypassing is perceived as highly unfair, particularly if management has made important concessions to achieve what it thought would be a final settlement. This perceived unfairness in turn, destroys the relationship of trust between management and union needed to cement a continuing bargaining relation. Finally, bypassing at the state level can result in demands being placed on local government that it cannot easily meet, thereby further straining relations between union and management. For instance, enactment of a maximum hours law for firemen will necessitate the hiring of additional firemen. But if the hours proposal were rejected at the local level for that reason, the result could well be that other services provided by the local government would have to be curtailed." (Citations and footnotes omitted) as quoted LMRS Special Report entitled *The Role of Politics in Local Labor Relations* (1973) excerpted from *Project: Collective Bargaining and Politics in Public Employment*, 19 UCLA LAW REVIEW 957 (1972).

²¹ FLA. STAT. §447.505 (1975).

²² *Alley, Checklist for Preparation for Strikes in the Public Sector*, 48 FLA. B. J. 7, at 578, (September 1974).

²³ This problem was recently the subject of

proceedings before the Florida Public Employees Relations Commission (PERC) where such an agreement between the School Board and the Broward County Classroom Teachers Association was challenged by the PERC staff. PERC Case No. 8H-SC-754-1001, and see Note 25 *infra*.

²⁴ Burton and Crider, *THE INCIDENCE OF STRIKES IN PUBLIC EMPLOYMENT*, 1976.

²⁵ Broward County Classroom Teachers Association Inc., v. Public Employees Relations Commission, 331 So.2d 342 (1st D.C.A. Fla., 1976).

²⁶ *Backlash Against City Workers*, U. S. NEWS AND WORLD REPORT, December 22, 1975, at 31-33.

²⁷ *Chances for Labor Peace in 76 and the Price*, Interview with former Secretary of Labor, John T. Dunlop, U. S. NEWS & WORLD REPORT, December 15, 1975, at 78; see also interview with Jerry Wurf, (Note 15, *supra*), and Zagoria, *The U.S. Cities Tackle Impasses* (Note 29, *infra*).

²⁸ See excerpts of testimony of Eugene Berrodia, former executive director of the Internal Personnel Management Association to Michigan Senate Committee, reprinted in LMRS NEWSLETTER, Vol. 6, No. 5 (May 1975) and report of National Commission for Industrial Peace; for a contrary view see *Final Offer Arbitration*, the effects on public safety employee bargaining published by D.C. Heath & Co., Lexington, Massachusetts 02173, and the article by Professor James L. Stern appearing in LMRS NEWSLETTER, Vol. 6, No. 9 (September 1975).

²⁹ "Other objections are that the process has diminished actual bargaining and that the implicit and explicit assurance that an award will mean 'no strike' has been violated on occasion." Zagoria, *The U.S. Cities Tackle Impasses*, PROCEEDINGS INDUSTRIAL RELATIONS RESEARCH ASSOCIATION 25th Annual Meeting, (September 1973) reprinted LMRS NEWSLETTER, Vol. 4, No. 9, at 50-55; Wirt *The Public Sector Strikes, Dilemma of the Seventies*, 8 CAL. WEST. L. REV. 102, 116 (1971).

³⁰ This was expressed by former Labor Secretary, John Dunlop in a recent interview where he responded to the question: "Is Arbitration the answer to bargaining with public employees?" as follows:

"I have some reservations about that. First of all, if people are compelled to arbitrate, you don't really get the support of both sides for a settlement. It isn't their settlement; it's the arbitrator's settlement. And they don't have the same interests in carrying it out. They didn't have a part in shaping it. They don't know quite what it means and they have become more anxious to litigate to fight in court or otherwise over the fine points instead of trying to work it out.

The problem that worries me philosophically is that the government - the management side - is yielding to an arbitrator a very major component in the setting of taxes and charges in the public sector. I think that it is the responsibility of the elected representatives rather than of the arbitrator." (See Note 27, *supra*).

³¹ See Notes 26, 29 and 30 (*supra*).

³² The three basic forms of interest arbitration are distinguished by the treatment by the arbitrator of the final last positions of both parties to the dispute. Under the procedure termed conventional arbitration parties submit their final offers to the arbitrator who hears the evidence and fashions an award based on his best

judgment. The arbitrator is not confined by the final offer of either party in making his decision, although the offers of the parties generally serve as perimeters to the arbitrator. The second form is referred to as final last offer on the package arbitration. Under this procedure the arbitrator must choose either the employer's or the union's offer totally and without deviation. The third form is final last offer issue by issue arbitration whereby the arbitrator must choose either the employers position or the union's position on each individual issue presented for arbitration by the parties. While there are variations on these three basic models, most legislated interest arbitration in the United States adheres fairly strictly to one of these forms. Mulcahy and Smith, *Last Best Offer, How to Win and Lose*, Special Report, LABOR MANAGEMENT RELATIONS SERVICE 1976 at 3.

²¹ Final Offer Arbitration, the effects on public safety employee bargaining, (Note 28, *supra*). And even arbitrators are beginning to recognize this problem. Public sector arbitrators are under serious attack for lack of concern or understanding of municipal government's arguments on ability to pay. Muriel M. Morse Personnel Director for the City of Los Angeles, told the annual meeting of the National Academy of Arbitrators.

She said state and local negotiators "find relatively few arbitrators with expertise in, or understanding of governmental processes." According to the Government Employee Relations Report, she hinted that arbitrators might find themselves subject to the check of voters' referenda on their decisions, but conceded that this approach would pose serious logistical and other problems.

A similar view about the inadequacy of public sector arbitrators and/or fact-finders has been expressed publicly by Mayor Henry W. Maier of Milwaukee, Wisc., on several occasions. LMRS NEWSLETTER Vol. 7, No. 7, (July 1976) at 1.

²² Sam Zagoria, Director of Labor Management Relation Service, a former member of the National Labor Relations Board; he has had experience in many aspects of labor relations. At various times he has represented management of labor, assisted in drafting legislation, served as a neutral mediator and as an adjudicator. He has appeared on many platforms as a speaker and trainer and has written numerous articles, edited a book *PUBLIC WORKERS AND PUBLIC UNIONS* and led a series of national and regional discussions for the American Assembly.

²³ Zagoria, *The U.S. Cities Tackle Impasses*, at 53 (Note 29, *supra*).

²⁴ Adopted as an Amendment to the Home Rule Charter of Englewood, Colorado on November 7, 1972.

²⁵ The background of implementation of the

Englewood plan is interesting. This is not a true "Last Best Offer Referendum" provision. (see Note 47, *infra*);

"So far our historical data is brief. In the past two years we have gone only so far as the impasse hearing and decision. One in 1974 was for the Fire and in 1975, the Police. Both times the impasse decision followed exactly the cities' proposal and neither group was willing to test the election process. The impasse decision was therefore accepted by both sides. We have found that the unions have a fear of trying to sell to the public on an election basis a greater package than decided by the mediator. They also fear receiving less if the city decides to put on the ballot a low package that could be acceptable to the taxpaying public." Extracted from a letter to the author, dated December 19, 1975 from Richard A. Lorig, Personnel Director City of Englewood, Colorado.

²⁶ "A final alternative for dealing with the problem of union power might be to make bargaining settlements subject to voter approval by referendum. This would give the public a direct and controlling voice in labor relations matters. It is reported that in San Francisco, where the city charter permits wage rates to be submitted to a referendum, the threats of the Chamber of Commerce to use the referendum device are the substantial restraint on the ability of the public employee unions to achieve their demands through political pressure. Requiring referendum approval of every settlement, however, would incorporate needless uncertainty and expense into the bargaining process. In addition, it might prove too effective a restraint on the unions. Experience in several cities indicates that even justified cost increases in government are likely to arouse a great deal of opposition where the specific items are subject to voter approval. To avoid these problems and still retain the beneficial aspects of the referendum procedure, the availability of the referendum could be conditioned on the gathering of a sufficient number of voter signatures on a petition calling for the referendum." (citations omitted); *The Role of Politics in Local Labor Relations* LMRS SPECIAL REPORT (Note 20, *supra*).

²⁷ *Where City Workers Ran Into a Taxpayers Revolt*, U.S. NEWS AND WORLD REPORT, April 19, 1976, at 70-80.

²⁸ *San Francisco Voters Indicate Unhappiness*, LMRS NEWSLETTER, Vol. 6, No. 12 (December 1975) at 5 *San Francisco Voters Indicate Unhappiness*.

²⁹ Letter to Author from Honorable Dianne Feinstein dated April 29, 1976.

"Attached please find a copy of a draft Charter Amendment, now pending in Committee, which enables a majority of the Board of Supervisors to submit to the voters the additional rates of compensation above

that adopted by the Board of Supervisors in the event it is not possible to reach an agreement through the meet-and-confer process.

"The intent of the Charter Amendment is to provide a mechanism whereby additional rates of compensation beyond a 'last best offer' by the Board of Supervisors can be submitted to the electorate for a 'yes' or 'no' vote."

³⁰ Extracted from proposed Charter Amendment, presently pending before the California Board of Supervisors.

³¹ Argument in support of proposition K, material prepared by Supervisor, Dianne Feinstein, enc. in letter to author, April 29, 1976.

³² LMRS NEWSLETTER, June 1976, at 6.

³³ Wall Street Journal, May 10, 1976, at 7.

In what was hailed as a victory for the city's board of supervisors, some 1,700 striking municipal craft workers agreed early Saturday morning to go back to work after the supervisors withdrew two anti-labor measures from the June 8 ballot. One would have given the city the right to fire city employees who strike and the other would have allowed voters to decide on specific wage proposals for the craft workers who struck. Yesterday was the last day the measures could have been removed from the ballot.

³⁴ Letter to author dated June 3, 1976 from Supervisor Dianne Feinstein.

"I agree the Propositions 'E' and 'K' were important bargaining tools. In this way, we could use these propositions as negotiable items rather than relying on economic issues.

³⁵ Such a procedure is contained in the Englewood, Colorado Charter Provision: "(A) the referendum election 'best last offer' is not necessarily on the ballot. Actually three proposals could appear, which are: (a) Unions proposal not necessarily 'last best'; (b) Impasse decision of career service board, which is step one in the impasse process; and (c) an offer by the City not necessarily the 'last best'. Part of the reasoning behind the above is to put the union in the position of losing perhaps considerable fringes and wages if the electorate decide (c) and the city decides to use only a minimal package on the ballot."

Extracted from letter to author; see Note 37, *supra*.

³⁶ Resolution No. 2292 adopted by the City of North Bay Village, Florida on April 27, 1974, provided a referendum election on the question of whether the City of North Bay Village should be permitted to increase millage for fiscal 1974-75 one additional mill.

³⁷ The results of the special election held June 25, 1974, in the City of North Bay Village were set forth in Resolution No. 2295, adopted June 26, 1974, as follows:

In favor of the increase:	490
Against the increase:	416

by Britt L. Polley

Binding Arbitration

Many local communities are losing, or are about to lose, more control of their public education systems. Legislatures are enacting impasse resolution legislation (binding arbitration, for example) which in effect removes school boards and other government officials from their decision-making roles.

The genesis of this movement is a sincere legislative response to the increasing number of strikes by public employees. Legislators hope that the enactment of binding arbitration will eliminate labor unrest. **Arbitration is erroneously seen as a trade-off for the right to strike.**

The reasoning behind compulsory binding arbitration is basically as follows:

- Public-sector bargaining impasses often result in strikes, legal and illegal.
- Strikes in the public-sector are generally undesirable, and therefore, an alternative to them must be found.
- Reliance upon an outside, neutral, third party who decision is binding on both parties is an equitable solution to this problem.¹

As a rationale, this all works nicely. As a reality, the ramifications call for alert and immediate reaction by all school board members and other local government officials to assure that binding arbitration does not displace their responsibility to govern.

No one faults the goal sought by mandated binding arbitration (i.e., the end to teacher strikes); however, it is erroneously assumed that teacher strikes are the worst outcome of collective bargaining. **They are not!**

The central concern and most

damaging aspect of binding arbitration is its **removal of responsibility and authority from local school boards.** How is this so? When an arbitrator comes onto the school scene, the board no longer has the authority to determine the educational, fiscal, and other public policy issues that will fall within the purview of the arbitrator's authority. By the time the arbitrator has arrived, it is too late for school boards to consider their responsibilities in representing the community by determining what kind of educational program they're going to provide. The arbitrator will do this for them.

The arbitrator's authority may be exercised in such a way as to transfer the board's power and responsibility to the teachers' unions through language in the contract. Thereafter, it will be extremely difficult, if not impossible, for the community to regain control lost through arbitration awards. **The rate of transfer of community control has been swift in areas where school boards have been caught unaware of the ramifications of binding arbitration.** In the future, the ability of the local citizenry in such situations to influence changes in policies, rules, or procedures may be more difficult and more costly to the public than to endure strikes.

While there is obvious merit in the desire to ensure labor peace, it appears that legislators are responding in an overly simplistic manner when they mandate binding arbitration as the best solution to the problem. Such judgment is not based upon the larger and more serious ramification that binding arbitration has regarding public schools. That comes back to the title of this arti-

cle: **"They're Answering the Wrong Question."**

"They" are the advocates or proponents of binding arbitration who think this is a central answer to the question of how to ensure labor peace. And while that is a very important question, the relevant question that must be asked is a more basic question: **Do local communities want their public schools to continue to reflect the values, ideals, goals and quality of education desired by those whose children are in the public schools and by those who pay the bill?** Or, do local communities want special-interest groups and disinterested outsiders, such as unions and arbitrators, usurping more and more decision-making responsibility in local school districts, thereby reflecting goals, values and educational programs for which those who impose them are not answerable for financing or implementing? The legislating of binding arbitration will more nearly guarantee the latter situation.

The form, substance and procedure of binding arbitration varies with the "creativity" of every legislature that has followed this path. Some use a single arbitrator, others use a panel, and still others offer a choice. Some arbitrators are allowed a "free ride;" that is, to make whatever awards they wish. Others must make awards on an issue-by-issue basis, accepting one of the advocates' positions or forging one of their own; or one may have last, best offer or final-offer selection in which the arbitrator selects the last, best offer of one of the parties, either on an issue-by-issue basis, or on a complete package basis. **Regardless of the variety of the form and process of**

Proponents of binding arbitration are answering the wrong question

binding arbitration, the basic concern of informed school officials remains the same: Does the school board (community) want to give up its control over deciding its position on issues which are bargained at the table? Translated into other terms, the question becomes: Do we want to significantly alter one of our most directly representational forms of government, namely school boards? Is binding arbitration worth it? Do the facts justify it?

The history of binding arbitration in the public sector is rather brief. At the present time, at least 20 states have binding arbitration for some of their public employees. (Pennsylvania has such legislation for police and firemen.) At least seven states now require some form of binding arbitration which affects public school employees. Proposed legislation is at various stages of consideration in several other states.

After a relatively brief experience with compulsory binding arbitration, more and more officials are seeing less and less harm in weathering a strike rather than going to binding arbitration. There is little evidence to refute that strikes diminish, at least temporarily, when binding arbitration is instituted as a part of impasse resolution. No one is surprised that binding arbitration will resolve disputes; the fallacy, however, is that the results are called an "agreement" or a "settlement." More accurately, it is a forced compliance arrangement thrust upon the local citizenry by an outsider; a disinterested, third party representing no one and responsible to no one.

Michigan's experience with binding arbitration is best expressed by Mayor Young of Detroit. He said that he has "become painfully aware, based upon bitter experience, that Act 312 (affecting Michigan police and fire personnel) has not worked, will not work, and

very possibly could bankrupt the very cities it was established to serve." Mayor Young, who once voted for the enactment of compulsory arbitration when he was in the state legislature, is now aggressively opposing Act 312 as its impact continued to strangle the public sector.

Eugene F. Berrodin, Michigan Municipal League, said of his state's experience with binding arbitration:

- There has been a loss of public management control of local police and fire forces.
- There has been a severe reduction in free collective bargaining among police and fire departments.
- Compulsory arbitration has resulted in significantly higher wages and fringe benefits for public employees and higher cost to the taxpayer than would have otherwise resulted from free collective bargaining. This conclusion was based upon a tabulation of 177 last-offer compulsory arbitration cases that indicated bias in favor of the unions' last offers as compared to those of the employers.
- Compulsory arbitration is procedurally costly and a time-consuming process. (Berrodin says that the average time from filing arbitration to the issuance of an award is about 12 months. Administrative fees

to attorneys and to arbitrators commonly range upwards of \$50,000 and more per case.)

Berrodin concludes his arguments against compulsory binding arbitration by pointing out that arbitrators routinely ignore the public in fashioning their awards; they are insulated from the taxpayers.¹

Last year Governor Milliken in his "State of the State" message called for a reexamination of compulsory arbitration and the costly impact of the arbitration awards in Michigan.

Other critical evaluations of binding arbitration come from Rhode Island, Wisconsin, Montreal and Australia.

A report on police/fire arbitration in Rhode Island indicates that "salary rates have gone up more rapidly since the institution of compulsory arbitration in 1968. Even if the two parties have agreed on many, if not most of the issues, they may both return to their initial position when the arbitration board is appointed. As a result, an expensive time-consuming process begins. A further problem in Rhode Island is that the entire collective bargaining process is so time-consuming that when compulsory arbitration is added, proceedings must continue almost all of the time in the case of a one-year contract."²

A report on the Wisconsin experience with compulsory arbitration (final offer on the package, not on each issue) includes the observation that "it is apparent that arbitration is causing the wages of the

(continued on page 14)

Dr. Britt L. Polley is associate executive director of the Indiana School Boards Association. This article was based upon comments made by Dr. Polley to the Pennsylvania School Boards Association at its 1980 summer program at Bucknell University.



Binding Arbitration

(from page 13)

public employees to increase more than they would have under fact-finding."⁴

The widely publicized Montreal policemen's strike occurred in spite of that dispute's having been subject to binding arbitration. The Connecticut School Boards Association found in its research that in Australia, where public-sector binding arbitration has existed since 1904, there is a proportionately greater incidence of strikes than has occurred in Connecticut without binding arbitration. Obviously, binding arbitration does not guarantee labor peace.

It is also interesting to note one union's point of view on binding arbitration. Gordon Cole writes in the *AFL-CIO American Federationist*, "Arbitration has taken away the initiative of trade unions. It has made it easy for union officials to escape responsibility. Arbitration has been a crutch and a scapegoat. With it, union and management have avoided responsibility. They are able to avoid new approaches. In compulsory arbitration, labor disputes become cases to be argued in legal form in a courtroom atmosphere, there are long delays to ascertain the facts...it has failed to achieve its primary purpose"⁵

After considering the problems with binding arbitration, school boards are probably concerned because it places far-reaching power in the hands of a person not elected, not accountable to elected officials, and not necessarily a resident of the community or even the state.

Because this transfer of power contravenes the fundamental nature of our democratic government, in several states binding arbitration legislation has been contested. In at least five such states, binding arbitration has been declared unlawful.

It is apparent that compulsory arbitration offends the equal protection clause of the U.S. Constitution when the right of voters to cast

effective ballots is violated because governmental decisions are made by politically unaccountable individuals — arbitrators.

The Colorado Supreme Court noted that the Colorado law would seriously conflict with basic tenets of representative government. The fundamental concern in this litigation is that officials engaged in governmental decision-making must be accountable to the citizens they represent.

Another concern that was alluded to earlier is that binding arbitration discourages honest, good-faith collective bargaining. Interest arbitration awards generally attempt to present a compromise among issues at dispute. This can only work to encourage unions to extend and expand their demands. Given the not uncommon "laundry list" of demands that public-employee unions bring to the bargaining table, and given the presence of binding arbitration as an impasse procedure, there is no reason to expect a teachers' union to drop any of its demands. It is more probable that a union will hold its position through arbitration, since it risks nothing by such a strategy. The union may well gain more through the arbitrator than it could possibly achieve at the bargaining table.

It is also of significant concern that the arbitrator's role is that of an ad hoc appointee who is not responsible for implementing the contract and therefore is not compelled to make awards that are

based upon effective, efficient management of public schools.

There are many other concerns board members can and do raise regarding binding arbitration, including the lack of required standards for arbitrators or for their training; the tremendous costs in time and dollars resulting from arbitration; and the concern for compromise instead of merit.

The prospects for binding arbitration are widely touted by some as a panacea for solving labor unrest, but it appears that binding arbitration in education labor relations raises some extremely serious questions. We can see the damage binding arbitration can do to representational government now operating in our schools. It is urgent for all concerned board members and their local communities to forewarn legislators that binding arbitration is not the answer for public schools.

FOOTNOTES

1. Public Service Research Council, "Compulsory Binding Arbitration And Public Sector Labor Disputes," *Issue Analysis*, February 1979, p.1.
2. Berroddin, Eugene F., "What's Wrong with Compulsory Arbitration," *Michigan Municipal League*.
3. *Public Personnel Management*, January 1973, pp. 6-7.
4. Stern, James L., *Monthly Labor Review*, September 1974, p. 39.
5. Cole, Gordon, *AFL-CIO American Federationist*, June 1972, p. 15.

Senator LUGAR. Mr. William Lindner, president of the Transport Workers Union of America.

STATEMENT OF WILLIAM LINDNER, PRESIDENT, TRANSPORT WORKERS UNION OF AMERICA

Mr. LINDNER. My name is William G. Lindner, the international president of the Transport Workers Union of America, AFL-CIO. We represent 50,000 public transportation workers from New York to San Francisco and some additional 100,000 in other phases of transportation and other related industries. I will read some excerpts from our written testimony and I would request that the balance be submitted into the record.

ELIMINATION OF FEDERAL ASSISTANCE

Given the importance of mass transit assistance both to our membership and the working public in urban areas, I am extremely distressed at the approach outlined by the administration in S. 2367, a bill which at bottom is an attempt to eliminate the Federal role in the development and maintenance of effective urban mass transit. The terms of S. 2367 are completely consistent with, and indeed, were virtually preordained by the positions taken by UMTA Administrator Arthur Teele before this committee and other congressional committees last summer. At that time, Mr. Teele, in essence, claimed that transit workers have enjoyed exorbitant rises in salaries and benefits while transit productivity itself as measured in both vehicle-miles per employee and passenger trips per employee has declined. He suggested that these wage and benefit increases were wedged out of the transit systems through predatory use of section 13(c) of UMTA paid for by Federal operating assistance. This bill is the notion that rising mass transit costs and the corresponding rise in Federal commitments under UMTA are primarily due to unjustifiable increases in labor costs.

Not surprisingly, the burden of S. 2367's, most important features, a drastic diminution in and an eventual cutoff of Federal operating assistance coupled with elimination of the Labor protections of section 13(c) will be borne basically by transit workers. We cannot accept this sort of approach. The inequity of imposing the sacrifices needed to control transit costs almost solely on transit workers is obvious. Equally important, however, is the fact that S. 2367 is premised on the misconception—that unwarranted labor costs are at the root of the rise in mass transit subsidies. This is simply not true and I predict that the administration's program, which is clearly founded on this notion, will fail to contain costs or improve productivity no matter what sort of wage sacrifices are wrung out of transit labor during the next decade. Indeed, I have no doubt that adoption of S. 2367, or a similar proposal, will destroy any possibility for development of more productive and effective mass transit systems, as well as the chance for stable labor relations over the next 3 years.

The question of labor costs is covered in detail in our written statement. I would just emphasize that every group, save for the professional labor baiter, has concluded that transit labor pay is in line with other public sector workers. Notably our own data shows

that Transit wages are behind police and firemen and the differential has remained constant over the last three decades.

In New York, the differential between transit pay and police and fire wages, has grown over the last 3 years. TWU Transit employees are paid the going rate in the cities where they work and do receive a livable wage. I would hope no one would deny that transit workers are entitled to a livable wage. It is certainly not a result TWU apologizes for. S. 2367's most regressive feature is its phase-out of operating assistance. Transit Systems do not have the funds to continue present levels of service and as Senator D'Amato stated, further service reductions or fare increases will push the industry to its knees.

The mass transportation system will not survive the 1980's without continuation of the operating assistance. I find the proposal particularly disturbing in light of Administrator Teele's continuing concern over declining productivity. The obstacles to improve productivity regeneration of effective mass are maintenance and service problems. Even Mr. Teele acknowledges this when he stated last summer that "UMTA has continually been told at various conferences that maintenance is the most critical area where research is needed." This judgment was affirmed by a recent study of the Citizen Advisory Committee of the New York Metropolitan Transit Authority. They found in July 1981, 8,400 trains failed to go into service or were pulled out of service.

The ramifications of this is obvious. Funds come primarily from operating, not capital expenditures. Under these circumstances, I am dumbfounded as to how the administration can articulate concern over and then jettison the one part of UMTA program which has productivity getting the most out of their vehicle and equipment.

FUNDS FOR SPARE PARTS

I should note—what I consider to be the only progressive feature of S. 2367 its inclusion of funds for spare parts in the capital assistance program. As I pointed out last summer, there is a desperate shortage of spare parts in most transit systems which can be verified by a tour of any New York bus repair facility. This has led to the cannibalization of new vehicles for parts and a drastic reduction in the life span of buses and subway cars.

However, the administration is being quite unrealistic if it thinks that assistance for procurement of spare parts suffices as a program for service maintenance improvement. It takes trained personnel with adequate equipment working in adequate facilities to repair these pieces of equipment. There was a 30-year decline in mass transit use, which bottomed out in the early 1970's. There must be a system for storage and location of parts. These are operating problems which, under the terms of S. 2367, hard-pressed urban systems will now be left to their own devices to solve. Transit systems have capital and human components. Equipment and vehicles will be damaged or deteriorate when used. Proper maintenance, service and management are required to cope with this. Such resources don't appear out of the blue. They are produced by sound training and management. Well-trained personnel cannot

manage and service the system unless adequate parts and facilities are available. In the end, no sound strategy for increasing productivity in mass transit can make a hard and fast distinction between capital and operating problems. Surely, it follows that no national policy for aiding mass transit can rest on such a distinction.

In this regard, I give Senator D'Amato great credit for the approach taken in his bill, S. 2377, which continues operating assistance and makes capital and operating aid part of one general assistance program. In this way he has collapsed the distinction between capital and operating assistance. This is the sort of approach long advocated by many of the now minority members of this committee and I am happy that Senator D'Amato took up the cudgel now that the Republicans are in the majority. Only because of the cap on operating aid articulated in Section 101, subparagraph 4, and because the general level of assistance is inadequate for the task at hand, it is clear and obvious to the TWU, and it should be to the committee, that the administration's plan for providing only capital assistance to municipal mass transit systems, is ultimately unworkable. Where and how will these communities get the resources to maintain and manage both new and existing capital assets? How will the Government protect its investment? We reiterate that productivity is a real concern, but operating assistance has to be targeted and a coherent strategy developed to encourage proper repair and maintenance services to the public will improve. UMTA must take a leadership role in the development of these strategies.

Unfortunately, S. 2367, with its provisions for elimination of operating assistance, is an attempt to shirk such responsibility in the mass transit regeneration. S. 2367 buries 13(c) in a number of ways. First, it exempts capital assistance, which constitutes 90 percent of the available assistance under the bill, from 13(c) requirement.

Second, it moves enforcement of 13(c) from the Department of Labor to the Department of Transportation, where labor protection principles will be jettisoned at every turn. Finally, it implements a "self-certification" program which allows transit managers to decide for themselves, without worker participation, whether they have made fair and equitable arrangements with their employees.

As international president, I was hoping that the minimal labor protections in 13(c) were at last accepted and we could go on to renovate mass transit. My reason for hope was the reasonable position taken by APTA and the fact that the House Oversight Committee did not recommend legislative changes in 13(c). In light of this, it is highly disillusioning that such proposals would emanate from an administration which, every time it confronts a labor group, pledges eternal fidelity to the continuance and vitality of collective bargaining.

I have not yet been shown documentation of a single case in which transit labor used 13(c) to blackjack a system into collective bargaining concessions. Most accusations are of the sort lodged in last fall's House Oversight Committee hearings. It was claimed that in Atlanta, there was a threat to withhold a grant unless management gave a bargaining concession. Minutes from the meeting showed no such threat.

Mr. Patilla said he thought he remembered one of his staff remembered such a charge. This makes for interesting histrionics, but it is a poor base for legislation. The leader of an organization pledged to destroy public sector collective bargaining would wish to see 13(c) eliminated. I am deeply disappointed that the administration would seek the same result.

Just last January, the President urged us to burn candles in the window in protest of the arbitrary deprivation of the collective bargaining rights of Polish Solidarity workers. It is beyond me how the President can support depriving American transit workers of the very same right.

In conclusion, S. 2367 is an utterly counterproductive piece of legislation. Its cutoff of operating assistance will destroy any possibility for productivity improvements and mass transit regeneration and will destabilize labor relations in the transit industry for years to come. The committee should be clear, S. 2367 is not a plan for mass transit revitalization, rather, it is a scheme for the eventual elimination of a meaningful Federal role in the development of effective public mass transit and we therefore, in transit labor, collectively support the approach to the program articulated in S. 2377.

Thank you, Mr. Chairman.

[Complete statement follows:]

STATEMENT OF
WILLIAM G. LINDNER, INTERNATIONAL PRESIDENT
TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO

Good afternoon, Mr. Chairman. My name is William G. Lindner and I am International President of the Transport Workers Union of America, AFL-CIO. The Transport Workers Union represents approximately 50,000 public transportation workers from New York to San Francisco.

Mr. Chairman, as has been stated many times over the last 17 years, the labor movement, through the AFL-CIO and its major transit unions, the Transport Workers Union of America, the Amalgamated Transit Union and the United Transportation Union, is committed to the development of an effective nationwide mass transportation program. This commitment is in part rooted in the direct and obvious stake that the Transport Workers and other transit unions have in the continuation and expansion of mass-transit systems.

An equally important factor in our support, though, is the significance of this sort of service to that segment of the working public which depends upon mass transit to get to their jobs. For example, in New York and Chicago over 80 percent of all employees working in the central business districts use public transit to get to work. These people constitute a major source of tax revenue and productive labor. They are the backbone of most urban economies. No such economy can function at full capacity unless there is a comprehensive plan for facilitating the transportation of its working population to

and from their jobs. Senator D'Amato put the matter well when he stated that "as transit services are curtailed ... regional economies fall, jobs are lost, and as a result, urban areas are increasingly unable to support national recovery."

Given the importance of mass-transit assistance both to our membership and the working public in urban areas, I am extremely distressed at the approach outlined by the Administration in S-2367--a bill which, at bottom, is an attempt to eliminate the federal role in the development and maintenance of effective urban mass transit.

The terms of S-2367 are completely consistent with and, indeed, were virtually preordained by the positions taken by UMTA Administrator Arthur Teele before this Committee and other Congressional committees last summer. At that time Mr. Teele, in essence, claimed that transit workers have enjoyed an exorbitant rise in salaries and benefits while transit productivity itself--as measured in both vehicle miles per employee and passenger trips per employee--has declined. He further suggested that these wage and benefit increases were wedged out of transit systems through predatory use of §13(c) of UMTA and ultimately paid for by federal operating assistance.

Underlying last summer's presentation by the Administrator and this bill is the notion that rising mass transit costs and the corresponding rise in Federal commitments under UMTA are primarily due to unjustifiable increases in labor costs. Not

surprisingly, the burden of S-2367's most important features-- a drastic diminution in and eventual cutoff of Federal operating assistance coupled with elimination of the labor protections set forth in 13(c) of the Act--will be borne basically by transit workers.

We cannot accept this sort of approach. The inequity of imposing the sacrifices needed to control transit costs almost solely on transit workers is obvious. Equally important, however, is the fact that S-2367 is premised on the misconception that unwarranted labor costs are at the root of the rise in mass-transit subsidies. This is simply not true and I predict that the Administration's program, which is clearly founded on this notion, will fail to contain costs or improve productivity, no matter what sort of wage sacrifices are wrung out of transit labor during the next decade. Indeed, I have no doubt that adoption of S-2367, or a similar proposal, will destroy any possibility for development of more productive and effective mass-transit systems, as well as the chance for stable labor relations over the next three years.

Labor Costs

Let's look at the question of labor costs. When we examined our own records we found that from 1967 (the base year for the Consumer Price Index) to 1978 the wages for TWU bus operators in New York increased 112 percent. At the same time

the CPI for the New York area rose 162 percent. See Hearings before the Subcommittee on Oversight and Investigations of the House of Representatives, October 20, 1981, p. 522-528. We also found that the wages of bus operators in New York and in other TWU cities* lagged behind wages of other public employees, such as firemen, by approximately the same amount over the last three decades. Id., 524, 568-571.

Notably, APTA data from 1978-1980 shows that transit wages have leveled off and decreased in real terms over the past two years. In 31 out of 33 cities from which figures are available, operator salaries have decreased in real terms. In 25 out of 33 cities the salaries of other categories of transit workers have decreased. By contrast, in 32 out of 33 cities fuel prices have continued to rise, and other non-labor costs have risen in the majority of these municipalities. During this same period labor costs as a percentage of total costs fell approximately 10 percent to 68 percent of total costs. Id. at 528.

This data gives no support for what I have stated is the central theme of S-2367--that the availability of operating assistance combined with UMTA's 13(c) protection enables labor to obtain extravagant wage settlements. Every organization which has examined the question of labor costs, save those--such as the Public Service Research Council--which make a profession of union baiting, has concluded that transit labor

*New York, Philadelphia, San Francisco, Houston and Miami.

costs are not out of line. The latest group to do so was the House Oversight and Investigations Committee which, in a preliminary report, stated that while "... transit labor did relatively better than other workers in the period 1967-75, a catch-up period after the lean final days of the private businessess, ... in the mid 1970's that relative advantage disappeared and transit workers since that time have fared approximately the same as other public employees and the industrial workforce. Report by the Subcommittee on Oversight and Investigations, p. 24.

TWU transit employees are paid the going rate for labor in the cities where they work and do receive a livable wage. I would hope, though, that no-one would deny that transit workers are entitled to a livable wage. It is certainly not a result TWU apologizes for. It is the reason for our existence.

The Elimination of Operating Assistance

S-2367's most regressive feature is its phase-out of operating assistance. Transit systems do not have the funds to continue present levels of service and, as Senator D'Amato stated, further fare increases or service reductions will push the industry to its knees. In my judgement, urban mass transit will not survive the 1980's without continuation of operating assistance.

I find the Administration proposal to end operating

assistance particularly disturbing in light of Administrator Teele's continually expressed concern over declining transit productivity. The most important obstacles to improved productivity and regeneration of effective mass transit are maintenance and service problems. Even Mr. Teels acknowledged this when he stated last summer that "UMTA has continually been told at various conferences that maintenance is the most critical area where research is needed." This judgment was affirmed by a very recent study of the Citizen Advisory Committee to the New York MTA. They found that in July of 1981, 8,400 trains either failed to go into service or were pulled out of service. The ramifications of this sort of failure on productivity levels is obvious.

Yet, federal assistance for development of proper maintenance and service comes primarily from operating, not capital, funding. The fundamental barriers to gains in productivity are operating and maintenance deficiencies, not capital deficiencies. Under these circumstances, I am dumbfounded as to how the Administration can articulate concern over productivity and then jettison the one part of UMTA program which has tangibly assisted transit managers and workers in getting the most out of their vehicles and equipment.

Now, to be fair, I should note what I consider to be the only progressive feature of S-2367--its inclusion of funds for spare parts in the capital assistance program. As I pointed

out last summer, there is a desperate shortage of spare parts in most transit systems--a shortage which can be easily verified by a tour of any New York bus-repair facility. This shortage has led to the cannibalization of new vehicles for parts and a drastic reduction in the life span of buses and subway cars.

However, the Administration is being quite unrealistic if it thinks that assistance for procurement for spare parts suffices as a program for service and maintenance improvement. Parts do not put themselves into transit vehicles or track. It takes trained personnel with adequate equipment working in adequate facilities to do that. Significantly, transit systems were badly depleted of skilled personnel during the 30 year decline in mass-transit use which bottomed out in the early 1970's. In addition there must be a system for storage and location of parts. These are operating problems--problems which, under the terms of S-2367, hard pressed urban systems will now be left to their own devices to solve.

It is fundamental that transit systems have both capital and human components which inevitably intertwine. Equipment and vehicles will be damaged or deteriorate when used. Proper maintenance, service, and management are required to cope with this. Such resources don't appear out of the blue, they are produced by sound training and management. In turn, well trained personnel cannot properly manage and service a system unless adequate parts and facilities are available. In the end, no

sound strategy for increasing productivity in mass transit can make a hard and fast distinction between capital and operating problems. Surely, it follows that no national policy for aiding mass transit can rest on such a distinction.

In this regard, I give Senator D'Amato great credit for the approach taken in his bill, S-2377. S-2377 continues operating assistance and makes capital and operating aid part of one general assistance program. In this way he has collapsed the distinction between capital and operating assistance. This is the sort of approach long advocated by many of the now minority members of this Committee and I am happy that Senator D'Amato saw fit to take up the cudgel now that the Republicans are in the majority. TWU stops short of endorsing S-2377 only because of the cap on operating aid articulated in §101(4), and because the general level of assistance is simply inadequate for the task at hand.

It is clear and obvious to the Transport Workers Union, and it should be to this committee, that the administration's plan for providing only capital assistance to municipal mass-transit systems is ultimately unworkable. Where and how will these communities get the resources to maintain and manage both new and existing capital assets? How will the Government protect its investment? We reiterate that productivity is a real concern, but operating assistance has to be targeted and a coherent strategy developed to encourage proper repair and

maintenance so service to the public will improve. UMTA must take a leadership role in the development of such strategies. Unfortunately, S-2367, with its provisions for elimination of operating assistance, is clearly an attempt to shirk such responsibilities in mass transit regeneration.

Labor Protection

S-2367 buries 13(c) in a number of ways. First, it exempts capital assistance, which constitutes 90 percent of available assistance under the bill, from 13(c) requirements. Second, it moves enforcement of 13(c) from the Department of Labor to the Department of Transportation--where labor protection principles will be jettisoned at every turn. Finally, it implements a "self certification" program which allows transit managers to decide for themselves, without worker participation, whether they have made fair and equitable arrangements with their employees.

As International President of TWU I was hoping that the minimal labor protections in 13(c) were at last accepted and we could go on to the vital business of renovating mass transit. My reason for hope was the reasonable position taken on the matter by APTA and the fact that the House Oversight Committee did not recommend legislative changes in 13(c). In light of this, I must say that it is highly disillusioning that such proposals would emanate from an Administration which, every time it confronts

a labor group, pledges eternal fidelity to the continuance and vitality of collective bargaining.

Section 13(c) of UMTA exists to preserve collective bargaining in the transit industry. It requires that as a condition of federal assistance, fair and equitable arrangements be made to protect the interests of employees when a system is restructured. It does not require that transit managers agree to any particular contractual provision. It only requires that they live up to existing contractual provisions and continue to collectively bargain where transit employees have chosen to do so.

For TWU, 13(c) is of primary importance in states which forbid unionization of public employees. Texas is such a state and without 13(c) our membership in Houston would have been completely and arbitrarily deprived of collective bargaining and contract rights when the city took over the system a few years ago. The representative of the Public Service Research Council is undoubtedly delighted at the prospect of a group of public employees being unilaterally deprived of collective bargaining rights. I find it an exceedingly unfair result.

There is no issue in mass transit as overblown as the dispute over 13(c). The allegations that transit labor withholds its approval of 13(c) certifications for UMTA grants to procure bargaining concessions will, no doubt, be reiterated

today. This is a falsehood which seems to have gained a life of its own and all I can say is that TWU does not use 13(c) in this matter. If we caught one of our locals using 13(c) as a bargaining weapon we would take steps to stop them. In fact, we routinely sign off on UMTA grants and my understanding of present procedure is that if we don't affirmatively raise an objection to an operating grant within two weeks the Department of Labor clears it automatically.

I have not yet been shown documentation of single case in which transit labor used 13(c) to blackjack a system into collective bargaining concessions. Most such accusations are of the sort lodged against the TWU by Mr. Patillo of the Atlanta system in last fall's House Oversight Committee hearing. He claimed that ATU's local leader in Atlanta threatened to withhold approval of an UMTA grant at a MARTA Board Meeting unless management gave a bargaining concession in return. However, notes from the meeting disclosed no such threat and Mr. Patillo rather lamely remarked that someone on his staff seemed to remember such a remark. See Hearings before Subcommittee on Investigations and Oversight, p. 566. In short, this sort of charge makes for some interesting histrionics, but it is a very poor basis for legislation.

Conclusion

In conclusion, S-2367 is an utterly counterproductive

piece of legislation. Its cut-off of operating assistance will destroy any possibility for productivity improvements and mass-transit regeneration. The defacto elimination of UMTA's labor protective provisions will destabilize labor relations in the transit industry for years to come. The Committee should be clear--S-2367 is not a plan for mass transit revitalization. Rather, it is a scheme for the eventual elimination of meaningful federal role in the development of effective public mass-transit, and we, therefore, in transit labor collectively support the approach to an effective urban mass transit program articulated in the 'D'Amato, Moynihan, Heinz, Weiker' bill S-2377.

Senator LUGAR. Thank you very much, Mr. Lindner.

Senator Dixon, do you have any questions?

Senator DIXON. I have no questions, Mr. Chairman. I thank the witnesses for their testimony. I wanted to call to the attention of the Chair that the information given me on the allocation of the funds, Mr. Chairman, is simply not adequate. It doesn't make a comparison between the administration bill and the D'Amato bill, which I think is fundamentally important to all of us that want to make a profoundly important decision affecting mass transit in this country.

I would respectfully request the Chair and the Department to make that available to the members of the committee. I think I will send a letter to the Secretary of Transportation, Mr. Chairman, with a copy to you, specifically outlining the information I would like to have. I thank the Chair for whatever support you can give me in making that information available.

Senator LUGAR. I certainly will support the Senator from Illinois. I think the information is vital. Likewise, as we have any other alternatives that arise, all members should have this source of comparison.

Each of you gentlemen has presented a viewpoint certainly with constraint, clearly on the argument with regard to whether 13(c) has been misused or overused. There is a difference of opinion. I suppose the differences may stand as they have been given. I don't want to press any of you into debate necessarily with each other. But at least the statement by GAO to begin with, would indicate that whatever may have been the transition presumption of 13(c) language, from time to time, it may have been utilized to bring about further gains in collective bargaining purposes.

Situations were cited. Maybe Mr. Lindner's contention that it was not a matter of transition and protection of employees in that transition, but rather a means of proceeding in negotiation to find gains for transportation workers over the course of the years from 1940 onward.

DIFFERENCE IN INTERPRETATION

Is this a difference in interpretation of what 13(c) may have been? Is it the sort of thing that you, as veteran experts on this, could give the committee some enlightenment as to what, in your judgment, the Congress intended in 13(c) and how it has evolved in ways, in your judgment, other than what was intended, or is it really truthful in construction right from the beginning?

Mr. AHART. I think the Congress intent, the best we could define it, was to be sure that employees, when they moved from one system to another, through public takeover of private systems, did not lose the gains that they had won through collective bargaining or otherwise in the employment situation. I think with the requirement for the negotiation and agreement under 13(c) the unions and the employment groups—very properly considering their interests—tried to use that requirement to make whatever gains they could through that process.

I think the transit authorities, wanting the advantage of Federal assistance, necessarily felt some pressure to accede to some union

demands. They did not want to delay the projects and so on. I think in some cases, the transit authorities may have signed agreements that they did not fully understand the long-term implications of. On the interest in arbitration issue, at issue in the courts has been whether or not the application of that was confined to 13(c) disagreements or whether it was broader and reached the whole process. Often, it was ruled it did reach the full collective bargaining process.

I think we are living with some things, perhaps, not well thought through and which have gone beyond the problems that Congress sought to reach in 13(c).

Senator LUGAR. Mr. Lindner.

Mr. LINDNER. I think the factor that perhaps is either overlooked or in many cases, many people are unaware of, is initially, that by and large, the public transit workers today were all formerly private transit workers. They were covered by all the typical labor laws of the land. They exercised them along with every other type of organized worker in the city. And by and large, most of them were organized from coast to coast before they became public employees.

I think it was the intent of Congress to preserve the rights that the transit workers had exercised as private employees after their transition into public employment. To a large extent, that purpose has been accomplished. But it is not a one-shot deal. It is a conditioning condition. Otherwise, the law becomes meaningless.

Furthermore, what many people look upon as improvements that workers in public transit have achieved under the protection of 13(c), to some degree were really not improvements at all but a matter of staying in step with the developments in the economy, keeping up with wages, staying in step with the developments in industry generally and keeping our heads above water with the cost of living. So transit workers have made improvements in wages and conditions, but so has everybody else.

The record, I think, will clearly show that, as found by numerous different reviews, that transit workers are no better off or no worse off, comparatively speaking, than their counterparts in private industry and in public.

Senator LUGAR. Mr. Lindner, in the testimony of Mr. Ahart on page 14, where he is talking about issues involved that may have gone beyond the intended scope of section 13(c), Mr. Ahart says, for example, local union officials contended that three Albuquerque transit supervisors were creating ill will among the employees. According to transit system officials, the union demanded that the three supervisors be fired or it would not sign the agreement.

The union signed the agreement after one of the supervisors was fired and the others were disciplined. Let me raise the question as a practical matter, is this a proper 13(c) subject?

Mr. LINDNER. It certainly is not. This is an allegation presented here without support. I'm not personally familiar with that operation because those workers happen to be represented by the Amalgamated Transit Union. These same or similar allegations have been made in the past.

We have repeatedly asked people to come forward with real evidence or witnesses and I have yet to hear or see one. I would say

further to that, that we have had numerous applications come through our office, as every transit union does. We have never held up a transit grant. We have had occasions where disputes have arisen as to how a certain grant was going to be applied, what effect it was going to have, would it in effect, damage the conditions or aspirations of workers in a particular operation.

CONTRACTING MAJOR REPAIR OPERATIONS

One of the areas we quite often find is in dispute, such as was mentioned here earlier today, the business of contracting out major repair operations. That's a rather controversial, difficult, and very expensive operation. I would like to just cite one example that was cited in a hearing earlier last year.

The Houston Transit Operation or Authority, arranged for the subcontracting of the rehabilitation of a number of old buses. They were sent to a repair facility in Chicago and another in Minneapolis. The projected cost was going to be quite reasonable. They ran into very serious problems. Not only did the cost almost double before they completed the project, the buses did return very late. As a result, the authority had to then go out and lease buses from another transit authority that had done their own repair work and delayed the implementation of services on certain routes that they had depended upon the rehabilitated buses for. The net result is that the authority in Houston spent twice the amount of money they expected to, and had to go to court to try to recoup some of their losses.

The workers who are involved in those transit facilities feel that this is a slap in the face for the local transit workers. They know that they could have done the job. They could have done it cheaper and better. Instead, they find themselves berated for being low in productivity, not doing a good job and the service is lousy, and it is all beyond their control because they didn't get a chance to do the job in the first place.

Mr. HOUSTON. An interesting phenomenon has occurred as a reaction by States to 13(c). State legislatures, after an example set by Massachusetts, have started passing bills to increase the hand of transit management to compensate for the effects of 13(c).

That is now being litigated and proposes a whole new course of action if the States do feel that the balance has been tipped unfairly toward unions.

In Tennessee recently, the Commercial Appeal editorialized in favor of just such a bill. The concluding paragraph is interesting. It talks about abolishing binding arbitration for transit in this context.

It says "It is a fair proposal and even the transit unions ought to realize that. It doesn't serve the unions well to have arbitrators give them increases that the system cannot pay and that result in closing down the system."

We assume this is a fair-minded individual looking at the facts who says the system as a whole is not functioning properly.

The financial system of transit in this country is weak and sick. You are going to see States take these things into their own hands because Congress refuses to address the issues. There is a tremen-

dous amount of litigation going on, challenging various effects of 13(c).

But none of them are able to focus on what Congress can focus on, which is the organism itself, the root of 13(c) itself.

FEDERAL INVOLVEMENT

Senator LUGAR. Mr. Lindner, let me ask you a question about the more general proposition of your testimony. What is the basic reason in your judgment why the Federal Government should be involved in providing money for mass transit at all, leaving aside the distinction that the administration is drawing between capital expenditures and operating expenditures or the D'Amato bill brings together in combining the two in various ways.

Why should the Federal Government be involved as opposed to local governments handling their mass transit affairs or, in the broader context of capital, State governments? Are there any situations in the country in which States would not be broad enough entities to handle this situation?

Why should the Federal Government be involved at all?

Mr. LINDNER. I think there are at least three reasons. To begin with, many of the larger metropolitan areas that are involved in this kind of activity happen to be on State borders. In New York, they look at it as a tristate metropolitan area.

Obviously then, the interests of more than one State are involved and certainly more than the city, and to expect the municipal authorities to provide the planning and the funding that goes into the provision of the kind of system that is needed, of course, is not realistic.

By necessity, the problem overlaps the State line and therefore, the authority that's going to deal with it should necessarily have a similar scope.

Second, the Federal Government is already and has been for years knee-deep in subsidizing and directing and setting policy for competing phases of transportation, the automobile, the truck, waterways, and the airlines.

To exempt or exclude a city transit and surface transit from that kind of interest and support I think is unbalanced and unrealistic, as well as unfair.

Then finally, I think the third reason would be that the development of technologies, philosophies, and new approaches to transportation development is such a fast developing and important function that I don't think that it is practical to leave it to a city to work out all of their own problems in this area.

If we look at other countries, we would find that all of them are involved very deeply to a much greater extent than this country. Perhaps we can learn a lesson from some of them.

In fact, they are now supplying most of our transit vehicles, materials, and technology which used to be a major function of this country.

Senator LUGAR. The Senator from Connecticut, Mr. Dodd, has joined the hearings.

Would you like to make an opening statement and raise questions?

Senator DODD. I will forgo the opening statement, Mr. Chairman. I apologize to you and the witness for being late in getting over here.

I commend you for these hearings and I appreciate the witnesses being with us today. I'm also curious about GAO studies. I think generally the GAO has done a pretty good job for Congress over the years.

I wonder if you might tell me who you talked to. Who are the people you questioned about 13(c)? Did you talk to management, I presume, transit authorities?

Mr. AHART. Yes. Basically the scope of our work, Senator, was at the local level. We talked principally to the transit authority officials. We also talked to the local union officials that were involved in negotiations of the section 13(c) agreement, and that were involved in the application of that agreement after it was executed.

We did not have an opportunity because of the constraints of time to talk in any depth with the headquarters of those unions, the internationals of those unions, which according to my understanding, play a fairly heavy role in the negotiations of the 13(c) agreements.

I don't know what role they play perhaps in the application of that in terms of advice and assistance to the local union affiliates.

So we did not talk to them. We did talk to the local union officials and the management officials.

Senator DODD. You indicate in your summary, "Before presenting information obtained during our visit to 12 transit authorities, we need to point out that most of the information provided was provided by transit authority officials and may reflect some bias on the section 13(c) agreements issue."

"We have not discussed the information developed with UMTA or with the international union officials involved in negotiating the 13(c) agreements."

What was the reason? How about the Department of Labor? Did you discuss that—

Mr. AHART. We haven't had any full discussion with them on the results of our work. I think that's spelled out in my statement as well, which is a necessary qualification.

I think on an issue which is as controversial as this issue obviously is, when you take information and views from either side of that issue, you almost have to attribute that to those people because I think there needs to be a balancing—

Senator DODD. I appreciate your candor here. I'm not being critical of your candor at all. In terms of trying to develop an opinion as to the efficacy of this particular provision which is so controversial is what I'm concerned about.

I think it is important to get some flavor of the opinions of those most directly affected by 13(c), both management and labor.

You indicate in your statement that—you cite the *Nashville, Tennessee* case that's been discussed when I was here. You may have gone into it in greater detail. If you have, you can refer me to the record and I will check on it, Mr. Ahart.

Let me, if I could, talk about that interest arbitration provision which was included in the 13(c) agreement between the union and the transit operators and then the issue, the fact that it didn't exist prior to that.

Is it true that this—while the previous agreement didn't contain an arbitration agreement, the union prior to that time did have the right to strike in Nashville, Tenn.?

Mr. AHART. I have to check the record on that, Senator Dodd. I don't have that information at the moment.

We could check that and give that to you. Whether or not that was a concession made during the negotiation of the 13(c) agreement in compensation for any diminishment of the right to strike or other things, I don't know.

The origin of the interest arbitration provision was the section 13(c) agreement.

Senator DODD. Did the public—did those people have the right to strike.

Mr. LINDNER. It is my understanding they did. Again, it is not a unit represented by our union. That has been the history around the country. I will go one step further and say that the Amalgamated Transit Union has a policy going back many years to encourage interest arbitration in all of their negotiations—even before 13(c). In recognition of the fact that, in typical transit negotiations even back in the days when it was a private industry, the transit worker was usually the middleman, the pawn in the perennial battle between the politicians and the public and what was going to happen to the fare. The result usually was a simple scenario: The fare was too low, the costs were running the company into a deficit, the operator would go to the city fathers and say we have to have a fare increase or some form of subsidy. The politicians would turn them off because that was bad news. Then, of course, the ball would be in the union's court and when the contract opened up, often there would be a strike. Regardless of what the outcome was, the workers usually took it in the neck, although they might settle their contract with a reasonable increase. Arbitration was a better approach. Our union has resisted arbitration but when we find ourselves stripped of the right to strike, facing fines and jail, arbitration looks like a better recourse.

THREE BASIC ISSUES

Senator DODD. I think there are basically three issues in dealing with 13(c). The question of status quo is obviously a fundamental one. Then the accusation that this provision is terribly costly. In fact, our colleagues here who requested that study made that statement. It is one of the most costly provisions that exist in the whole area of labor legislation. Third, it discourages innovation. The question is does that provision discourage innovation. I see those as basically the three fundamental issues being confronted by the study and by the questions raised by others. Let's just assume—we might check this out. It was my understanding, Mr. Chairman, that, in fact, these employees did have the right to strike prior to that provision being included. The assumption was that by becoming public employees they would give up that right to strike and in exchange for giving up the right to strike they took the arbitration interest, which is the arguably then status quo maintained. I don't know if GAO—I gather you haven't if you are not familiar with whether or not they had the right to strike to begin with.

Mr. AHART. We have to check whether or not they had it previously. The facts I have here suggest that they probably did. They may still have that right afterward. They did go through a rather complicated structure of setting up the authority and setting up the management company, and so on, so that the employees would retain their status as private employees—retain all these rights. Let us check out both sides of that: What strike rights they had prior and what strike rights they have now. We will round out the record on that point.

[The information requested is as follows:]

In the Nashville case, the employees' right to strike was not affected by the public takeover. The employees retained their status as private employees and the pertinent provisions of the applicable collective bargaining agreements both before and after provided for the employees' right to strike in any case where the employer refused to arbitrate as provided for in the collective bargaining agreement.

Senator DODD. Can I ask you whether or not in your opinion—let's just make a case that there was the right to strike and that was given up. Your assessment or analysis—would you consider that to be status quo?

Mr. AHART. We saw this I think in Los Angeles, where they do have interest arbitration in that particular section 13(c) agreement, which is operable only if they lose the right to strike. If they lose the right to strike, the interest arbitration comes into play. Given the context within which 13(c) was enacted—to maintain the status quo—if they give up a right which was gained through collective bargaining and under the regular labor-management relations arena and find another tool which is useful to them, it would seem to me that would be perfectly in keeping with the intent of Congress.

Senator DODD. You have indicated, too, in your study—interrupt me any time, Mr. Chairman.

Senator LUGAR. All right.

Senator DODD. You have indicated in your study as well that contracting out is always a problem. I served in the Naval Underwater Systems system in London and we had some problems. The GAO did some studies for us at that time on contracting out on the issue of whether or not you are getting the quality of service. How does that fit in? Is that a legitimate complaint to be raised by labor in terms of status quo, that by contracting out, the argument goes—you know it better than I do. By contracting out, obviously the position of the employee is eroded, whatever else may occur. Clearly, the position of the employee is eroded and that that in effect violates that status quo provision.

Mr. AHART. That is a very complex situation, as I am sure you are aware, Senator. If it were a situation where you were having a public takeover of a private transit system which did have employees that had certain rights and benefits, and as a part of that takeover a portion of that function would be contracted out to be done by some other authority, I think there would be no question as to the appropriateness of it. I think as the years go on and situations come up where the management of the company finds that to improve productivity or accommodate some other management purpose it might be useful to contract out. I think certainly if it is going to displace union workers or people who were in jobs there is

a legitimate concern on the part of the workers. Whether or not it should be dealt with in the 13(c) context, I have that question in my mind. Each case would have to stand on its own merits as to how close the relationship was to the situation the Congress was trying to address in passing that provision.

Mr. LINDNER. I would like to refer to a hearing last year before the Subcommittee on Investigation and Oversight in which Mr. Putnam commented on this very same point. He laid out the records of his union's operation under 13(c). He made the point that 84 percent of the contracts that they had negotiated in the last 2 years had been on a voluntary basis without either strikes or arbitrations—that actually the fact that arbitration is available as a last resort to resolve an impasse usually works as an incentive on both sides to negotiate a settlement without recourse to that risky and troublesome and expensive proceeding.

SUBCONTRACTING PROBLEMS

On the other subject of subcontracting, I would, also, like to make a comment. We had a very similar series of questions in that same hearing last year. We thought it appropriate to bring in some evidence of the kind of problems that we see with subcontracting. We were objecting at that point in the hearing to the policies announced and exercised by UMTA, in effect, encouraging a wider use of subcontracting throughout the industry with the support of Federal financing. We made the point, for example, and brought into evidence, a few small parts from the Metropolitan Transit Authority shops in New York. One was a small metal window bracket for a bus. It was being purchased by the—from the Grumman Flexible Bus Co. for \$102. They could make the identical product in the shop for \$20. Our committees had argued and fought repeatedly with management there to keep that work in-house because we could do it more efficiently, cheaper, and it would give a little additional morale to the people in the shops. We lost the battle. We also brought in a small rubber gasket. It is the kind of thing you would expect to pick up in a hardware store for maybe a quarter or half a dollar. The Transit Authority was paying \$7.17 apiece for them. We know that they can punch it out in a matter of seconds in most any shop that has any kind of equipment. Our problem there, is that there is all this great concern expressed about productivity and you see money like this going down the drain. Aside from the waste of money in these expensive, inefficient contracts, the devastating effect this has on morale in the shops can't be measured. The worker who sees this going on under his nose day after day, can hardly be blamed if he says, what the hell, I'll goof off a couple of hours. Why not? They don't care about waste.

It is especially discouraging when the Federal Government is encouraging it. We think that the area of productivity is a most important one. Workers are definitely interested in it, not only for the benefit of the public and the costs to the Government, but for their own sake. It is a matter of morale. A matter of pride and dignity that most workers still feel. It is rapidly being turned over.

The greatest need in terms of productivity, as everyone seems to be concerned with, is a need for a greater concern or establishment

of standards as to how these systems are to operate, what levels of safety and service they are to maintain. I am amazed that the Federal Government, with all the money and effort that is put into mass transit, has yet to establish any kind of standards as to performance by the authorities who are collecting all these funds.

For example, in a related industry, the airline industry, where the Federal Government actually supplies no funds of this kind, of course, you can argue subsidies from the standpoint of traffic control and so on, and airport development. But in the operation of airline industries, there is no direct subsidy. However, the Government does require that the operator must lay out a program of preventive maintenance, safety standards, and operating procedures to insure that that system will operate efficiently and safely.

They have to submit to those regulations and they are subject to surveillance. If they don't perform, they can be grounded. Now, here, is a transit operation where billions are being pumped in by the Federal Government and there are no standards, no surveillance, no check on cost going into this operation. This is a great lack and a great shortcoming of the whole system. If we are really interested in productivity improvements, this is the area to check.

Senator DODD. I'm delighted to hear you give that statement. These aren't negotiations in the Ford Motor plant negotiated by the vice president of UAW in New England and Pete Pistalo, whose company I had the pleasure of a couple of weeks ago. The whole question of employee involvement is such an important element in that contract, I think it's going to be a real breakthrough. In industry after industry that has gone after employee involvement, has discovered an untapped resource.

There are people who are concerned about the product, concerned about the customers they serve. There has been a glaring misconception that's existed far too long, that people who work in these industries are not really interested in the ultimate product that they produce. So I'm delighted to hear you talk about that. Your ranks are particularly worthwhile.

Mr. AHART, I gather you concentrate on labor issues at GAO? Is that correct?

Mr. AHART. The Department of Labor comes under my division's jurisdiction. We have not done a great deal of work in the collective bargaining area.

Senator DODD. Let me ask you this. I know the time this—at that time, this GAO standard was requested, the members of this body requested review of those provisions talking about 13(c). They said this section was reputed to be among the most costly and intrusive of Federal laws. With your experience as a person involved with GAO labor issues, is that statement an exaggeration?

Mr. AHART. I wouldn't want to engage in characterizing this particular provision as compared with other provisions of law, Senator Dodd. We found what is reported in my statement here today. It tends to be somewhat anecdotal in the sense that we went to 12. It is not necessarily representative of the industry.

We found that the interest arbitration provisions that were included in section 13(c) contracts were probably the most important and had about the most important implications to the extent that we could determine them. We found that we could not measure the

effects on transit system costs or wages or anything else very precisely as a result of those provisions, because we really don't have any way to define what would have happened in their absence.

Senator DODD. I will ask you in the negative, then. Your study did not support that statement?

Mr. AHART. We didn't try to compare it with any other laws. We couldn't measure the effects of this law in financial terms. Obviously, it has had an effect in giving some tools to the collective bargaining process, particularly through the interest arbitration provisions which were not there prior to the section 13(c) agreement. To measure the effect against the world, as it would have been in their absence, I can't do.

EXCESSIVE COSTS AND DELAYS

Senator DODD. I'm trying to get a sense. Did you find in your study any egregious examples of excessive costs or excessive delay? Just in the narrow program merit of your study?

Mr. AHART. In the *New Jersey* case, there was an 18-month delay in a project there in trying to work out a section 13(c) agreement. I would guess that the parties to that agreement, the ones that withheld agreement until they got their terms, would say that that delay was necessary to carry out that project.

I think it is very difficult to characterize something as being excessive in any kind of an absolute sense. The costs were rising during that period of time and, obviously, it will cost more to purchase buses, or whatever, later than it would have earlier. But I'm very reluctant to characterize it one way or the other. You can't measure the effects as a result of these provisions against what may have happened in their absence.

Senator DODD. Aside from the *New Jersey* case, did you find any other examples that would have been in that same category?

Mr. AHART. In the *Atlanta* case, if you talk to the management, they would blame the section 13(c) for very substantial wage gains beyond what they felt were warranted in the circumstances.

Senator DODD. We didn't need to do a study to find that out. You weren't shocked by that statement.

Mr. AHART. We found that their estimates, as you might expect because they are an interested party, were exaggerated. Whether or not a fair settlement was arrived at through interest arbitration, whether or not it differed substantially from what would have been arrived at through a regular collective bargaining process, I don't know.

Senator DODD. Mr. Lindner, do you want to comment on that?

Mr. LINDNER. I would like to again refer you to the record in the House Subcommittee Investigation and Oversight hearing last year on page 534, where again, Mr. Putnam is quoting from the ASPER report. He says there are few issues related to mass transit as overblown as the controversy over 13(c). Transit managers continually complain about its cost, yet the ASPER report put out by the Department of Labor a few years ago, found that the economic impact of 13(c) was almost indiscernible.

I have yet to hear a documented case of a holdup by either union under 13(c). I'm not familiar with the *New Jersey* case that was just

referred to. I do know that just recently, the whole New Jersey transit operation was taken over by the State and as a result, there was a major negotiation involving three unions as well as the State, as to how that system was going to be integrated and how 13(c) would apply.

Senator DODD. That was a major restructuring of the whole transit system?

Mr. LINDNER. That's right. The transit of New Jersey was the largest privately operated transit system in the country. It was being converted to public operation along with all of the other fringe areas and operations around the State. So there was a major consolidation.

Senator DODD. It took 18 months, Mr. Ahart?

Mr. AHART. That was the negotiation of the section 13(c) agreement for acquisition of the two private bus systems; yes, sir. It took 18 months.

Senator DODD. All right. Mr. Chairman, I have gone on longer than you may have set time limits for, but I appreciate your generosity.

Senator LUGAR. Thank you, Senator Dodd. Speaking for all my colleagues who participated in these hearings, I thank you for coming today. It has been a helpful set of testimony.

The hearing is adjourned.

[Whereupon, at 5:05 p.m., the hearing was adjourned.]

[Additional material received for the record follows:]

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AREA CODE 202
 888-2800

April 30, 1982

*ADMITTED IN PENNSYLVANIA ONLY

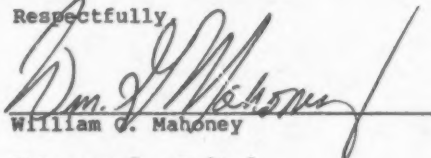
The Honorable Richard G. Lugar, Chairman
 Subcommittee on Housing and Urban Affairs,
 Committee on Banking, Housing and Urban Affairs
 Room 5300
 Dirksen Senate Office Building
 Washington, DC 20510

Re: S. 2367 and S. 2377

Dear Mr. Chairman:

The attached statement of Vice President Kenneth R. Moore of the United Transportation Union is submitted to correct the record made before the Subcommittee on Housing and Urban Affairs on April 26, 1982, regarding the erroneous charge that the United Transportation Union sought and obtained the discharge of an Albuquerque, New Mexico transit supervisor. There is also enclosed the statement of Mr. James R. Snyder, Chairman Legislative Committee, RLEA presenting the position of the railroad unions representing commuter rail service employees on the pending legislation.

Respectfully,


 William G. Mahoney

Attorney for United
 Transportation Union

WGM:ssw

cc: Honorable Edwin Garn, Chairman, Committee on Banking,
 Housing and Urban Affairs
 The Honorable Senator, Ranking Minority Member
 Edward C. Dicks, Committee Editor

BEFORE THE
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS
SUBCOMMITTEE ON HOUSING AND URBAN AFFAIRS
UNITED STATES SENATE

STATEMENT OF KENNETH R. MOORE,
VICE PRESIDENT, UNITED TRANSPORTATION UNION, BUS DIVISION

April 30, 1982

This statement is presented on behalf of the United Transportation Union, Bus Division, and it is respectfully requested that it be placed in the printed record of the hearings held before this Subcommittee on S. 2367 and S. 2377. My name is Kenneth R. Moore. I am Vice President of the United Transportation Union in charge of its Bus Division. I was an Alternate Vice President from 1964 to 1971 and have been a Vice President since 1971. In these capacities I have been and continue to be charged with the responsibility for the representation of those employees in the transit industry for whom UTU maintains contracts with their employers. My office is located at 14600 Detroit Avenue, Cleveland, Ohio 44107.

At the outset of this statement the UTU, Bus Division associates itself with the views of the Amalgamated Transit Union, its general counsel and the Transport Workers Union of America in their opposition to S. 2367; their support of adequate funding for urban mass transit; the retention of the protection of employee interests as contained in existing law since 1964; and, the retention of the Davis-Bacon requirements.

The major purpose of the submission of this statement at this time is to rebut the testimony of a major witness before this Committee.

The General Accounting Office prepared testimony submitted to this Subcommittee on April 26, 1982, gives examples of various effects of Section 13(c) from the point of view of 12 transit authorities, only one of which involved an authority whose employees are represented by the United Transportation Union (erroneously referred to as "United Transit Union" by the GAO at page 13 of its prepared testimony). In developing its testimony for this hearing GAO admittedly relied entirely on information developed through interviews with transit authority officials and ignored that obtained from Department of Labor and union spokesmen. (GAO Statement, p.5.) GAO also admits that accepting transit officials statements at face value "may well reflect some bias" yet GAO presents those statements without qualification as to accuracy or possibility of effective challenge. GAO claims to have discussed with local union officials the problems and issues raised by the transit authorities but did not discuss the information developed "with LMSA or UMTA, or with the international unions' officials who were involved in negotiating the Section 13(c) Agreements." (GAO, p.5.)

GAO, therefore, commences its testimony in this matter by conceding in effect that it is merely a surrogate witness for 12 transit authority managements.

GAO's out-of-balance approach to the presentation of its testimony before this Subcommittee is particularly unfortunate in the case of the only example given which involves the UTU.

In that example, set forth at pages 13 and 14 of its prepared statement, GAO noted as "another effect" of Section 13(c) agreements that the UTU would not sign Section 13(c) agreements on three grants of operating funds totalling \$5.5 million unless the Albuquerque Transit System acceded to its demand that three supervisors who "were creating 'ill will' among the employees" be discharged. Also as part of the demands of the union were resolutions of collective-bargaining agreement violations involving the employment of part-time employees. All of this GAO admits to be "according to transit system officials."

The testimony of GAO in sole reliance upon the unverified and self-serving statements of "transit system officials" is erroneous in its facts and in its implications. I can make this statement with complete conviction because I was involved personally in this matter with the then Mayor of Albuquerque, Mr. David Rusk.

I can state without equivocation that no demand by me or any responsible UTU official was made for the discharge of Sun-Tran supervisors. The matter of employee problems with three supervisors was discussed by me with Mayor Rusk at the time I met with him in December, 1980, to discuss the execution of Section 13(c) agreements in connection with three grant application's (designated by UMTA as NM-05-4005, NM-05-4006 and NM-05-4007). There is nothing unusual in discussing with any management matters other than those which are the particular subject of a particular meeting. However, discharge of the supervisors was not requested or even discussed nor was the discussion of our

problems with those supervisors related in any way to UTU willingness to execute Section 13(c) agreements. I have no independent knowledge or recollection of whether the three supervisors were disciplined or discharged or, if they were, whether it occurred before or after the execution of Section 13(c) agreements; but I do know that one event was not the cause or effect of the other. I am sure my statements would be fully corroborated by former Mayor Rusk were he to be interviewed by GAO.

It is true that UTU desired to correct contract violations and immediately following our December meeting I wrote Mayor Rusk and informed him that UTU would execute the Section 13(c) agreements upon his execution of a memorandum correcting those violations. Mayor Rusk informed me by return letter that he would not execute such a memorandum because he was of the opinion that correction of collective-bargaining agreement violations were not appropriate subjects of Section 13(c) negotiations. At the same time he assured me that he would look into the matter and correct it if possible. I then instructed our attorneys to see to the processing with the Department of Labor of our agreement to incorporate by reference in these three applications earlier Section 13(c) agreements which we had executed with the Transit System. Clearly, therefore, UTU did not insist upon a correction of the contract violations as a condition of its execution of the Section 13(c) agreements.

I am attaching to this statement copies of correspondence on these subjects which passed between Mayor Rusk and me and which at the time were furnished to the Department of Labor.

In summary, of the two aspects of the Albuquerque example given by GAO on the uncorroborated word of transit officials, the first is untrue in fact and both are untrue in their characterization of UTU discussions of the resolution of supervisor and contract problems as conditions demanded by UTU as the price of its execution of Section 13(c) agreements.

Thank you.

BEFORE THE
HOUSING AND URBAN AFFAIRS SUBCOMMITTEE
OF THE
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS
OF THE
UNITED STATES SENATE
ON
S. 2367 AND S. 2377

STATEMENT OF JAMES R. SNYDER, CHAIRMAN
LEGISLATIVE COMMITTEE, RAILWAY LABOR
EXECUTIVES' ASSOCIATION

APRIL 30, 1982

This statement is presented on behalf of the Railway Labor Executives' Association and it is respectfully requested that it be placed in the printed record of the hearings held before this Subcommittee on the S. 2367 and S. 2377. My name is James R. Snyder. I am Chairman of the Legislative Committee of the Railway Labor Executives' Association and the National Legislative Director of the United Transportation Union. The membership of the Railway Labor Executives' Association consists of the chief executive officers of twenty standard national and international railway labor organizations. They are:

American Railway & Airway Supervisors Association,
Division of BRAC
American Train Dispatchers' Association
Brotherhood of Locomotive Engineers
Brotherhood of Maintenance of Way Employes
Brotherhood of Railroad Signalmen
Brotherhood Railway Carmen of the United States
and Canada
Brotherhood of Railway, Airline and Steamship
Clerks, Freight Handlers, Express and Station
Employes

Hotel & Restaurant Employees & Bartenders'
 International Union
 International Union of Machinists and
 Aerospace Workers
 International Brotherhood of Boilermakers
 and Blacksmiths
 International Brotherhood of Electrical Workers
 International Brotherhood of Firemen & Oilers
 International Longshoremen's Association
 International Organization of Masters, Mates
 and Pilots
 National Marine Engineers' Beneficial Association
 Railroad Yardmasters of America
 Sheet Metal Workers' International Association
 Seafarers International Union of North America
 Transport Workers Union of America
 United Transportation Union

Many of the unions named above represent employees engaged in railroad commuter train service, particularly in the Chicago area and along the so-called Northeast Corridor from Washington, D.C. to Boston, Massachusetts. Commuter rail services are also provided in other areas of the United States and wherever that service is performed employees represented before this Subcommittee through the RLEA perform it.

The RLEA strongly supported the enactment of the Urban Mass Transportation Act in 1964, including Section 13(c) [then Section 10(c)] thereof. The rail unions have been consistently supportive of the urban mass transportation program of the Congress since that time.

I can state without equivocation or fear of contradiction that the RLEA has sought from the outset of this program to cooperate to the fullest extent possible with the Department of Labor and the applicants seeking funds under it.

Because of the very large capital investment required in the operation of a rail commuter system the RLEA until recently was

not confronted with the problem of transition from private to public ownership and therefore was not faced with many of the difficulties which faced those unions representing motorcoach company employees.

Now, however, the trend is toward the direct takeover and operation of rail commuter services and facilities by state authorities as evidenced by this Congress' enactment of the Northeast Rail Service Act of 1981 and the actions of the Regional Transportation Authority of Illinois involving the Milwaukee and Rock Island railroad commuter operations serving Chicago.

It seems obvious therefore that now is not the time to cut the funds that are necessary to the operation of those vital systems or to eliminate the protections to employees guaranteed by the Congress when the unions representing those employees supported the enactment of Congress' mass transit program nearly two decades ago.

With regard to the position of RLEA on the S. 2367 and S. 2377, we support the position of the Amalgamated Transit Union and the Transport Workers Union of America expressed to this Subcommittee by representatives of those organizations in opposition to the enactment of S. 2367; in support of adequate funding for urban mass transit; for retention of the protection of employee interests as contained in existing law; and, for retention of Davis-Bacon requirements.

RLEA also endorses the views of the AFL-CIO expressed in the letter of April 28, 1982, to Chairman Anderson from Ray Denison, Director, Department of Legislation, AFL-CIO.

Thank you.

CONEG

COALITION OF NORTHEASTERN GOVERNORS

GOVERNOR J. JOSEPH GARRAHY, Chairman
GOVERNOR HUGH L. CAREY, Vice Chairman

DAVID D. ARNOLD
Executive Director

April 2, 1982

Mr. Peter B. Harkins
Staff Director
Senate Subcommittee on Housing
and Urban Affairs
5300 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Harkins:

Enclosed for your information is the resolution of the Coalition of Northeastern Governors (CONEG) concerning mass transportation programs.

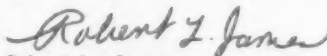
The position set forth in this resolution is unanimously supported by the CONEG Executive and Advisory Boards and the Governors of the States of Connecticut, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont.

Generally, the resolution stresses the importance of providing adequate federal funds to assist the states and localities in effectively maintaining our region's basic mass transit infrastructure and services. Specifically, it supports increased states' flexibility in administering particular programs and the reduction of red tape in mass transit regulations. The Governors believe that in order to preserve effective public transportation in urban and rural areas, federal operating assistance should continue to be provided at adequate levels.

If you have any questions or comments please call me at (202) 624-5440.

Best wishes.

Yours truly,



Robert L. James
Senior Research Associate
CONEG Policy Research Center

Enclosure

RESOLUTION OF THE COALITION OF NORTHEASTERN GOVERNORS
REGARDING MASS TRANSIT

- WHEREAS: The Congress is presently considering the reauthorization of mass transit programs for FY 83 and beyond;
- WHEREAS: The Northeastern states comprise of approximately 24 percent of the nation's population, yet over 50 percent of mass transit and 85 percent of commuter rail trips are taken annually in the region;
- WHEREAS: Public transit services made essential and irreplaceable contributions to the economic well being and revitalization of the region's largest cities and to the delivery of basic services to the rural areas;
- WHEREAS: Mass transit provides significant benefits to the region and the nation as a whole in terms of jobs, personal mobility, improvement of air quality, and energy conservation;
- WHEREAS: A modern and well maintained fleet of transit vehicles is essential in providing adequate mass transit service;
- WHEREAS: A sharp decline in urban transit service would result in creating impossible demands on existing highways;
- WHEREAS: Continued federal assistance to modernize and preserve mass transit services is necessary to ensure its survival;
- NOW THEREFORE BE IT RESOLVED THAT: The Coalition of Northeastern Governors urges reauthorization and appropriations for federal mass transit capital and operating assistance programs at levels sufficient to assure continuation of basic services, in both urban and rural areas;
- IT IS FURTHER RESOLVED THAT: CONEG supports program changes to increase state and local flexibility and reduce red tape in federal transit programs. The Northeastern Governors further support increased federal assistance for equipment maintenance or, alternatively, a mass transit block grant to the states;
- IT IS FURTHER RESOLVED THAT: In order to successfully explore mass transit financing issues involved in the Administration's "new federalism" turnback initiatives, we urge Congress undertake a comprehensive study of the impact of "new federalism" proposal upon state and local financing for both transit services and highways and we offer our assistance for such an undertaking.

AMERICAN ASSOCIATION OF STATE HIGHWAY
AND TRANSPORTATION OFFICIALS

JOHN A. CLEMENTS, President
Commissioner
New Hampshire Department of Public Works
and Highways



FRANCIS B. FRANCOIS
Executive Director

STATEMENT OF THE
AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS

Submitted to

THE HOUSING AND URBAN AFFAIRS SUBCOMMITTEE OF THE
SENATE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

by

Francis B. Francois, Executive Director

on

S2367, THE "TRANSIT ASSISTANCE ACT OF 1982"

and

S2377, THE "MASS TRANSPORTATION ACT OF 1982"

April 30, 1982

Founded in 1914 AASHTO represents the departments concerned with highways and transportation in the States, the District of Columbia and Puerto Rico, to foster the development, operation and maintenance of an integrated national transportation system. The active members of AASHTO are the duly constituted heads and other chief directing officials of the member highway and transportation agencies.

EXECUTIVE OFFICE: 444 N. Capitol Street, N.W., Suite 225 Washington D.C. 20001 Telephone (202) 624-5600

The American Association of State Highway and Transportation Officials (AASHTO) is pleased to offer this statement to the Housing and Urban Affairs Subcommittee of the Senate Committee on Banking, Housing and Urban Affairs regarding legislative proposals to reauthorize programs under the Urban Mass Transportation Act.

The Committee is to be commended for its work seeking to assure continued Federal support for public transportation, and AASHTO stands ready to be of any assistance in this effort beyond the offering of these comments. We strongly believe that there is a continuing Federal responsibility in public transportation, and recommend early enactment of multi-year legislation to continue needed programs.

AASHTO recently completed an in-depth analysis of our policy on public transportation. This effort resulted in the adoption of a new policy statement on February 25, 1982, a copy of which is attached to this statement. It addresses most of the public transportation issues now before this Committee.

We offer the following comments on provisions of current legislative proposals before this Committee, S2367 and S2377.

Block Grant Program

AASHTO supports the conversion of the present Urban Mass Transportation Administration (UMTA) Section 5 formula grant program into a block grant program. With regard to the Federal share of both this program and the discretionary capital program, we have surveyed our member departments and have found a large majority favor retaining the present Federal shares for both programs.

While AASHTO has not taken a position on a specific formula for apportioning block grant funds, we believe the break point in population groups should be considerably higher than 200,000 and specifically about 750,000, with the apportionments for areas under 750,000 population made to the states.

As to the uses to which the block grant funds should be put, we believe that eligible uses should include the planning, acquisition, construction and improvement of facilities and equipment, and non-labor operating costs. We also support a cap of 25 percent of total operating costs as an appropriate limit for Federal participation.

Grant Requirements

We strongly support the efforts to streamline program requirements and simplify procedures, as provided for in the legislative proposals.

Rural Public Transportation

We support the approach taken in S2377 regarding the Section 18 rural public transportation program. This program is of great interest to our member departments, and the states have been working hard to implement it. We believe that substantial progress has been made over the life of the program, and that it is now moving toward the kind of mature program Congress envisioned when it was established. Last year, the states collectively obligated over \$73 million in Section 18 funds. This was in excess of the \$72.5 million appropriated.

The Section 18 program has seen substantial growth since its implementation. Our annual AASHTO survey of the states on public transportation recently indicated that over 270 new systems have been created

since the program began; in all, approximately 700 systems have received Section 18 assistance. We are in the process of preparing a state-by-state map, which will show those counties in which programs are now operating. The map should be completed within a week or so, and we will be pleased to provide the Committee with a copy.

We are concerned that despite the success we believe this program has had, some misunderstanding persists. There is a belief by some that any carryover of funding should mean that funds are available for continuing the Section 18 program, and that accordingly no new authorizations are needed. It is true that in the start-up period, not all states could obligate all funding available to them each year. This is largely the reason that carryover funds exist.

Looking closer at the carryover issue, three things are apparent. First, there are many states that have encumbered all of their available funding, and who would thus be penalized if no new funding is provided. Second, other states are now reaching the level of a viable program, and will be needing additional funding. And third, part of the reason all funding has not been utilized in some states is concern that the future of the program is not assured. These areas do not want to start a new program which may have a short term.

There is much concern in many places about providing adequate support for the operation and maintenance of effective public transportation. It is generally true that between urban transit systems and rural systems of the kind the Section 18 program envisions, the rural systems are even more dependent on Federal operating assistance than the urban systems. We urge the

Subcommittee to continue authorizations for the Section 18 program, as provided in S2377, and retain the flexible approach which permits each State to determine the appropriate mix of capital and operation assistance.

In addition, we support the flexibility presently provided in the program which permits States to use up to 15 percent of their apportionment for administrative and planning purposes.

UMTA Section 15 Requirements

We are aware of the Administration's legislative proposal, S2367, which would extend the UMTA Section 15 reporting requirements to non-urbanized areas. We have surveyed our member departments about the desirability of such an extension, and have found that a large majority of the states oppose the concept. In the judgement of our member departments, the Section 15 requirements are just not appropriate for the rural programs.

We do support Section 15 reporting requirements for urbanized areas. However, we believe some modifications are in order administratively to ensure only essential information is collected.

Transferability of Funds

AASHTO supports the transferability of funding provisions contained in S2377. We believe this flexibility will enable limited resources to be directed to the areas of greatest need. We support extension of these transferability provisions among all areas within a State.

Labor Protection Requirements

AASHTO supports the provisions of S2367 as they apply to Section 13(c) of the Urban Mass Transportation Act. Further, we support the waiver of Section 13(c) requirements for nonurbanized areas. Experience has shown these requirements to be superfluous for nonurbanized areas.

State Assistance to Public Transportation

AASHTO finds that there are still some who do not recognize that the Federal government is not alone in providing support to transit agencies. The role of the states as a provider of program funding is continuing to increase, and we want to call this to the Committee's attention.

For the past three years, AASHTO has conducted an annual survey of the state involvement in public transportation. We provided a copy of our 1981 survey results to the Committee staff last year. Unfortunately, this year's survey is not yet complete. Some of the returns are in, however, and we would like to direct your attention to two tables we are filing with this statement.

The first table shows the annual transit unit budget, state funds only, for 37 of our members. The data is presented both for the current year, the previous year, and two years prior, and in several instances shows rather massive commitments. The second table covers 29 of our members, and identifies the sources of state public transportation program, as opposed to administrative funds. We thought you would find both tables of interest, and we will be pleased to provide a copy of the complete survey at a later time when compilation is finished.

Summary Comments

In concluding our statement, we want to underline the major concern we believe all of us hold. The one fact we all now face is that the 1978 Surface Transportation Assistance Act expires this year, and unless Congress acts, our public transportation programs will be absent essential Federal funding next year.

We hope that our comments will be of use to the members of the Subcommittee, and we stand ready to provide assistance wherever possible.

Annual Transit Unit Budget (State Funds Only)

TOTAL

(Administrative + Program Funds)

	Budget Year	Current Year	Previous Year	2 Years Prior
Alabama	10/1 to 9/30	10,000	8,000	17,500
California	7/81 to 6/82	154,700,000	116,000,000	17,200,000
Colorado	1981 to 1982	22,000	21,000	20,000
Connecticut	7/81 to 6/82	42,200,000	47,200,000	42,200,000
Delaware	7/81 to 6/82	4,225,500 a		
D.C.	10/81 to 9/82	295,402	398,300	
Florida	7/81 to 6/82	55,419,000	42,110,000	34,790,000
Georgia	7/81 to 6/82	1,191,498	1,051,151	839,404
Hawaii	1982 to 1983	44,000	44,000	80,000
Idaho	7/81 to 6/82	15,600	13,800	13,800
Indiana	7/81 to 6/82	10,660,000	9,325,500	4,275,000
Iowa	7/81 to 6/82	1,908,000	2,000,000	2,000,000
Kansas	7/81 to 6/82	7,605	8,450	10,250
Louisiana	7/81 to 6/82	12,840,132	12,296,496	6,731,042
Maine	7/81 to 6/82	203,762	203,762	203,762
Maryland	7/81 to 6/82	181,000,000	174,000,000	137,000,000
Massachusetts	7/81 to 6/82	159,073,000	n/a	n/a
Minnesota	7/81 to 6/82	25,350,000	30,460,000	30,030,600
Missouri	7/81 to 6/82	1,175,660	1,123,239	614,165
Nebraska	7/81 to 6/82	2,953,170	2,543,186	1,771,188
New Jersey	7/81 to 6/82	393,000,000	350,400,000	303,200,000
New Mexico	1981 to 1982	8,000	8,000	8,000
New York	4/81 to 3/82	415,915,000	400,911,000	-
Ohio	7/81 to 6/82	21,377,480	19,671,327	20,901,008
Oklahoma	7/81 to 6/82	100,000	50,000	50,000
Oregon	1981 to 1983a	3,055,432	3,309,546	
Pennsylvania	7/81 to 6/82	230,100,000	196,500,000	147,400,000
South Carolina	7/1 to 6/30/82	569,008	314,076	292,013
South Dakota	7/81 to 6/82	3,024	2,528	2,528
Tennessee	7/81 to 6/82	1,794,000	1,787,000	1,884,000
Texas	9/81 to 8/82	28,782,207	24,843,986	19,833,724
Utah	7/81 to 6/82	15,000	20,500	53,000
Vermont	7/81 to 6/82	100,000		
Washington	1981 to 1982	376,500	448,000	396,000
Wisconsin	7/81 to 6/82	25,300,000	30,000,000	16,800,000
Virgin Islands		200,000		

a. Biennium funding

Sources of State Public Transportation Funds
Program Funds

	GENERAL FUND	DEDICATED						OTHER
		Income Taxes	Sales Taxes	Property Taxes	Commuter Taxes	Fuel Taxes	Payroll Deductions	
California		x				x		
Connecticut	x							x ^a
Delaware								x ^b
D.C.	x							
Florida	x					x		x ^c
Georgia	x							
Indiana			x					
Iowa	x							
Louisiana	x							
Maine						x		x ^d
Maryland						x		x ^e
Massachusetts	x ^f					x ^f		x ^f
Minnesota	x							
Missouri	x							
Nebraska	x		x ^g			x ^g		x ^g
New Jersey	x							
New York	x		x	x		x		x
Ohio	x							
Oregon	x						x	
Pennsylvania	x							x ^h
South Carolina	x							
Tennessee						x		
Texas	x							
Utah	x							
Vermont						x		
Virginia						x		
Washington	x					x		
Wisconsin						x ⁱ		
Virgin Islands								x

a. State Bond Funds for capital improvements.

b. Toll Revenues

c. Motor Vehicles

d. Vehicle Registration

e. Various Sources

f. 80% General Fund; 15% of gas tax goes into general funds for Mass transit; 2% other.

g. These funds come from the State Highway Allocation Fund, which derives its money from motor vehicle fuel taxes, motor vehicle sales taxes and motor vehicle registration fees.

h. State Lottery

i. Including motor vehicle registration fees.

AMERICAN ASSOCIATION OF STATE HIGHWAY
AND TRANSPORTATION OFFICIALS

PUBLIC TRANSPORTATION
POLICY POSITION STATEMENTS

ADOPTED FEBRUARY 25, 1982

GENERAL

1. Public transportation is not a single mode, but a mixture of modes - each complementing the other and interacting to form a system for passenger mobility and a cost-effective family of services.
2. Public transportation is an integral part of our surface transportation system which helps to make the system work by reducing peak-period congestion, and maximizing the use of existing facilities, and contributing to many social, economic and environmental objectives.
3. Public transportation should also be supported financially by those who are not direct users because benefits are realized by the whole of the communities served, including private and public sectors.
4. Public transportation requires a federal role in the acquisition of equipment, in the construction and preservation of facilities and maintenance of services because of its contribution to the nation's economy, energy conservation and the environment and because of its important role during national emergencies.
5. While supporting a fair and just wage for all public transportation workers, AASHTO supports labor practices and procedures which ensure that the public interest will be protected and unreasonable labor costs avoided. AASHTO encourages Federal, State and Local actions to achieve this end, including Administrative reforms of Section 13(c) of the Urban Mass Transportation Act. AASHTO further encourages the use of performance and productivity measures for public transportation operations.

6. Where possible, private enterprise should establish and operate elements of the public transportation system. Federal and State laws should encourage this to occur.

URBANIZED AREAS

1. AASHTO supports the conversion of the UMTA Section 5 program into a block grant program managed by the States which is consistent with federal, legal and administrative requirements and the statutes of the individual states. Areas of over 750,000 population should receive their funding on a pass-through basis.
2. Uses of block grant funding should include (1) vehicle rehabilitation, replacement and fleet expansion, (2) facility construction and rehabilitation, (3) non-labor operating costs up to a limit of 25 percent of total operating costs, (4) ridesharing, paratransit and other special services and facilities, and (5) planning.
3. A discretionary capital assistance program should be retained for large extraordinary or emergency capital projects.
4. New rail systems should continue to be eligible for federal assistance where they can be shown to be the most cost effective alternative.
5. AASHTO supports expeditious processing of all Interstate Transfer projects, along with adequate funding.

NONURBANIZED AREAS

AASHTO believes that the personal mobility needs of small urban and rural America must be properly addressed in national transportation policies and programs. AASHTO also believes that it is in the national interest to preserve and improve the provision of public and specialized transit services within the non-urbanized areas of the country in a manner and form commensurate with the needs for such services. Therefore, AASHTO recommends:

1. The federal government should not arbitrarily sacrifice federal financial assistance for small urban and rural public transit programs in order to meet budgetary goals. Decisions about the levels of funding for urbanized and nonurbanized areas must be made in an even-handed manner.

2. Federal financial assistance for small urban and rural public transit puposes should continue to be channeled through the states and that the decisions on how best to allocate the assistance be made at the state level. Such decisions include the distribution of funds within the state as well as dividing the assistance between capital, operating and administrative projects.
3. Section 13(c) labor protection requirements should be waived for small urban and rural public transportation programs.
4. The federal government should use compatible data for the distribution of federal financial assistance to both urbanized and nonurbanized areas (e.g., Under the Urban Mass Transportation Act of 1964, as amended, this would mean that the same decennial census would be used to distribute funds under Section 5 and Section 18 in any given fiscal year as well as to determine the eligibility of recipients.)
5. Beginning in fiscal year 1982, any federal funds allocated among states for small urban and rural public transportation purposes should remain available for obligation for two years after the close of the federal fiscal year for which the appropriations were made. Any amounts remaining unobligated after this time period should be reallocated to those states which have a demonstrated need for and ability to spend the funds.
6. No State should receive less than 1/2 percent of the nationwide appropriation for the Section 18 program.
7. Section 3 funds should continue to be made available to rural areas and to be channeled through the States so that a comprehensive capital program can be developed in conjunction with Section 18.

ADMINISTRATIVE

1. AASHTO supports the use of certification acceptance procedures for compliance with Federal requirements whenever possible.
2. Federal (and State) audits should be consolidated, where feasible. For rural areas, especially, one audit agency should be selected and all accounting, reporting and auditing requirements should be simplified and unified for all rural transportation programs.
3. AASHTO believes that past Federal consultation efforts with State and Local officials have proven successful. Therefore, AASHTO encourages Federal officials to collectively discuss issues with State and Local agencies prior to the establishment of new policies.

4. AASHTO supports UMTA Section 15 reporting requirements, however, some modifications are in order such that only essential information is collected. It is recommended that reporting be coordinated through the State.
5. The U.S. Department of Transportation should be given the responsibility for coordination of transportation service activities supported by various Federal programs. At the same time all Urban Mass Transportation Administration funds flowing to a State should be channeled through the State transportation agency.

RESEARCH, DEMONSTRATION AND TRAINING

1. AASHTO supports a strong coordinated Federal research and demonstration effort. Specific projects should be determined by the U.S. Department of Transportation in coordination with the Transportation Research Board, National Cooperative Transit Research Program and State and Local agencies and operators.
2. The National Cooperative Transit Research Program should be supported and should continue to include state representation. State representatives should be selected by AASHTO.
3. Federal support in the development of training programs is essential in order to develop and maintain a high degree of professionalism within the public transportation field.

RIDESHARING

1. AASHTO supports the use of ridesharing as a public transportation mode, which complements the bus/rail mode using generally low capital investments or privately owned vehicles to achieve energy efficient mobility with little or no public subsidies.
2. AASHTO encourages the Federal government to minimize the regulatory burdens associated with implementing ridesharing programs through existing Federal funding sources (e.g. waive Section 504 and Section 13(c) requirements which are clearly not applicable).
3. AASHTO supports the elimination, by the Federal, State and Local governments, of legislative and other institutional barriers to ridesharing; further AASHTO supports the provision, by all three levels of government, of financial and other incentives to ridesharing.

4. AASHTO encourages its member organizations to provide a comprehensive ridesharing program for their employees and to take an active role in providing local ridesharing programs as appropriate throughout their respective states.
5. AASHTO encourages highway and public transit organizations to consider ridesharing as an integral element of the transportation system.

INTERCITY BUS

1. If Federal deregulation of the Intercity Bus industry occurs, a substantial number of routes will be discontinued. AASHTO recommends that a 4-year transitional period be made an integral part of any federal effort to deregulate the industry, and the states take the lead in developing a transition program but work closely with operators and other involved parties to achieve total effectiveness.

FUNDING

1. AASHTO supports a reserved source of funding for public transportation.
2. AASHTO believes transit fares should continue to be a principal revenue generator. A periodic review of the fare policy of a system is recommended in order to ensure that the maximum contribution possible is being made by users of the systems. Local control of public transportation is essential.

* * * * *

Adopted by the Policy Committee on February 25, 1982 in Washington, D.C. These position statements supersede all previous public transportation position statements.

STATEMENT OF LEWIS W. HILL, CHAIRMAN, REGIONAL TRANSPORTATION AUTHORITY OF
NORTHEASTERN ILLINOIS

Chairman Lugar and members of the Senate Subcommittee, I am Lewis W. Hill, Chairman of the Regional Transportation Authority of Northeastern Illinois. Thank you for the opportunity to include in the record of this hearing, my views concerning the legislative needs of public transportation.

As a brief identification—

The RTA was created in 1974 by Illinois voters to preserve and coordinate the public transportation system in Northeastern Illinois. The task of accomplishing this mandate is as complex as any found in the nation given that the region covers an area of approximately 3,700 square miles, has over seven million residents and contains urban, suburban and rural land uses with corresponding variations in population densities and service requirements.

The region contains one of the largest networks of mixed public transportation anywhere in the world. Service is provided by seven commuter railroads, 22 suburban bus systems, 24 paratransit projects and the bus/rapid transit lines of the Chicago Transit Authority.

Annual ridership on the RTA system is 741.1 million with a daily ridership of 2.4 million. In fiscal year 1982, those figures reflect a ridership loss of 35.6 percent on suburban bus, 24.5 percent on commuter rail and 7.5 percent on the CTA due to the fiscal year 1981's fare increases of 50 percent on CTA and suburban bus and 100 percent on commuter rail, along with systemwide service reductions.

In previous appearances before Congressional committees, I have discussed the reasons for these massive fare increases: Lack of state funding, spiraling costs of wages and fuel and the flat economy that impedes the growth of the RTA sales tax—our major source of funding outside of fare box revenue. Today, RTA riders pay 53.8 percent of the cost of their transportation—the highest fare recovery ratio of any major system in the nation. 34.2 percent of the cost of transportation operations is covered by the RTA sales tax. Federal subsidies account for 8.5 percent of our operating budget. And if present plans are carried out, that percentage will drop to zero in 1985.

Without federal assistance, how will public transportation systems throughout the nation survive? The answer, quite clearly, is many will not.

I am not here today to cry gloom and doom. Rather, I hope my testimony will support positions advocated by Transportation Secretary Lewis and will cause you to reflect on additional suggestions I shall make.

While understanding the feelings of some that federal operating subsidies contribute to escalating wage scales over which you have no control, and therefore, a reluctance to continue such operating subsidies, RTA supports the new approach to federal operating assistance.

Instead of the present direct operating assistance grants, RTA proposes that Congress allow public transportation systems funding for fuel and insurance. Without fuel, there will be no public transportation. By a fuel assistance program, Congress could emphasize its commitment to energy conservation in encouraging consumers to use energy efficient mass transit.

Studies have shown that a fully loaded bus is up to 15 times more energy efficient than an automobile while a fully loaded heavy rail car is the most fuel efficient form of urban transportation—53 times more efficient than an average commuter automobile.

Partly because of the RTA's transportation network that carries more than two million riders per week-day, fuel consumption in the Chicago area is showing a steady decrease. With federal funding fuel costs, we would show even greater gains in our energy conservation efforts by holding the line on the price of fares.

A second proposal concerns a major change in the traditional definition of "Capital Assistance" in order to allow for reconstruction and overhaul of capital equipment and facilities.

As an example, the useful life of a bus is 12 years, but its major component—the engine—lasts only seven years. It will need a major overhaul, or even a new engine, to last 12 years. With capital assistance allowance for overhaul and reconstruction, capital dollars will go further. In addition, they will act as a reinvestment to protect the original federal investment.

Where will the money come from to support this federal assistance? We strongly recommend to you consideration of Secretary Lewis' increased user fee proposal, with the provision that 1 cent of the proposed 5 cent increase in federal gasoline tax go to mass transit. This supplement to the capital assistance already available from

the general fund will provide many of the federal dollars needed to protect the country's investment in its transit system.

We also urge Congress to heed Secretary Lewis' advice to retain portions of the Safe Harbor Leasing rules that allow transit systems to sell depreciation benefits on transit vehicles and facilities. The retention of the sale/leaseback rules for transit vehicles and facilities provide a badly needed source of additional capital funding and are a major incentive for mass transit systems to purchase new rolling stock. In order to maintain a viable, modern operation, mature systems such as the RTA must be assured of funding to restore their physical plant. Well spent capital dollars have proved to lessen the need for the expenditure of the ever shrinking supply of operating subsidies.

In addition, we advocate that UMTA be authorized in legislation to guarantee notes and obligations issued by transit authorities for the purpose of financing new equipment and rehabilitation as defined under the Block Grant Program. The precedent for Loan Guarantee Authority exists within the Community Development Block Grant Program. The guarantees would be provided against the full UMTA multi-year authorizations. This would allow RTA to stretch its federal dollars and leverage UMTA assistance over a period of years. Federal assistance would be used for the repayment of principal and interest under this plan.

The establishment of a Loan Guarantee Authority would recognize the fundamental reality that the federal government—through an annual contribution contract—can assist local public agencies in achieving objectives that have large initial capital costs.

There is another subject that needs to be addressed, and that is a more equitably structured funding package that corrects counter-productive appropriation levels as compared to the amount of funds authorized.

At present, transit agencies receive a one-year appropriation against authorizing legislation. This makes it extremely difficult to meet corporate planning objectives when appropriation levels differ considerably from authorized funds.

We request that Congress consider three to five year legislative appropriation packages when enacting new transit legislation. With a firm commitment on appropriations, transit systems will have a clear road map to guide them in making short and long range plans. We will not be faced constantly with changing levels of appropriations that dramatically impact those plans.

Just as the private sector plans for the future, transit agencies develop operating and capital programs for a five-year period. Decisions are made at that time regarding type, phasing and time frame in which each project is programmed. To base all our plans on authorized levels, and then to find those levels reduced considerably at appropriation time is counter-productive to efficient and effective planning.

We realize that there are differing philosophies as to whether the federal government should be concerned with subsidizing public transportation. Obviously, we stand on the side of those in favor of federal support and would refute those who claim that financial assistance for transit is merely giving a free ride to the transit user. Clearly, that is not supported by facts.

Transit is a public service that benefits everyone—not only the transit rider. And as a public service, it deserves support from the federal government. The public benefits of transit are extensive:

Transit helps reduce traffic congestion, which eliminates the need to build additional streets, highways and parking garages.

Transit allows persons who do not own automobiles access to jobs that they could not otherwise reach, thus easing unemployment.

Transit promotes urban concentration which reduces the size and cost of sewer and utility installations.

Transit lessens medical costs by reducing air pollution.

Perhaps most importantly in today's environment, transit saves energy so that limited petroleum resources are available for other uses.

The RTA Transit System is one of the best in the country. In the first eight years of our existence, we achieved our original goals of preserving and coordinating the public transportation system in Northeastern Illinois. We had looked forward to the coming years as ones of innovation and change to meet the changing needs of our seven million residents. Instead, we find ourselves in jeopardy as massive fare increases and inconvenient service reductions cause rider flight away from transit and onto congested highways.

We take no comfort in knowing that we are not alone. Other transit systems throughout the country are in the same precarious financial situation that is forcing public transportation to take a giant step backwards.

In our own way, each of us has attempted to solve that problem. But service cuts, fare increases and management improvements can do only so much to address the problem. There is a point of diminishing returns when riders flee our systems and we then begin to deny service to those truly in need. Pursuing such a policy creates a devastating effect on the economy of villages, cities, regions—and ultimately, the nation.

Minimum wage earners will decide that they no longer can afford the cost of transportation to their jobs, or no longer can find convenient transportation at the hours when they need it. When they quit their jobs, we'll find ourselves in the position of trading transit subsidy dollars for welfare dollars.

It is only through the continued federal support of public transportation on both capital and operating levels that we in the transit community can hope to build strong, viable systems for the future.

The alternative is unthinkable: Transit will die. Cars will live (though not too well in congested, traffic-clogged urban areas). And the national flower will become a concrete cloverleaf.

Statement of

Louie Welch

President of the Houston Chamber of Commerce

In the last 20 years the Houston metropolitan area has grown from a "town" of some 1.4 million population to become one of the nation's largest urban centers with a population of 2.9 million. During this time of unparalleled growth it has been thrust into becoming one of the Nation's leading centers of industry and commerce. By the turn of the century we project that our Area will continue to grow to a population of over 5 million.

We in Houston are proud of our city and look forward to continued strong economic growth to provide new jobs and opportunities for our citizens. We strongly believe that a healthy local economy is the key to a successful city.

Still, our growth has brought its share of problems. In some cases, the growth we have experienced has outstripped our ability to provide public services. In my judgment, nowhere is this more evident than in the case of transportation. Anyone who has been to Houston and has tried to negotiate I-45 to catch a plane at Intercontinental Airport during the afternoon rush hour is well aware of the seriousness of our problems.

Our freeways, which were among the finest in the world when completed, are now crowded far beyond their design capacity. This congestion creates major economic and social costs and is now recognized by business and government alike as one of the leading problems which the city must and will face. In the remainder of this statement I would like to share with you a few statistics on Houston's transportation needs and provide a brief overview of some of the solutions proposed in the Regional Mobility Plan for the Houston Area.

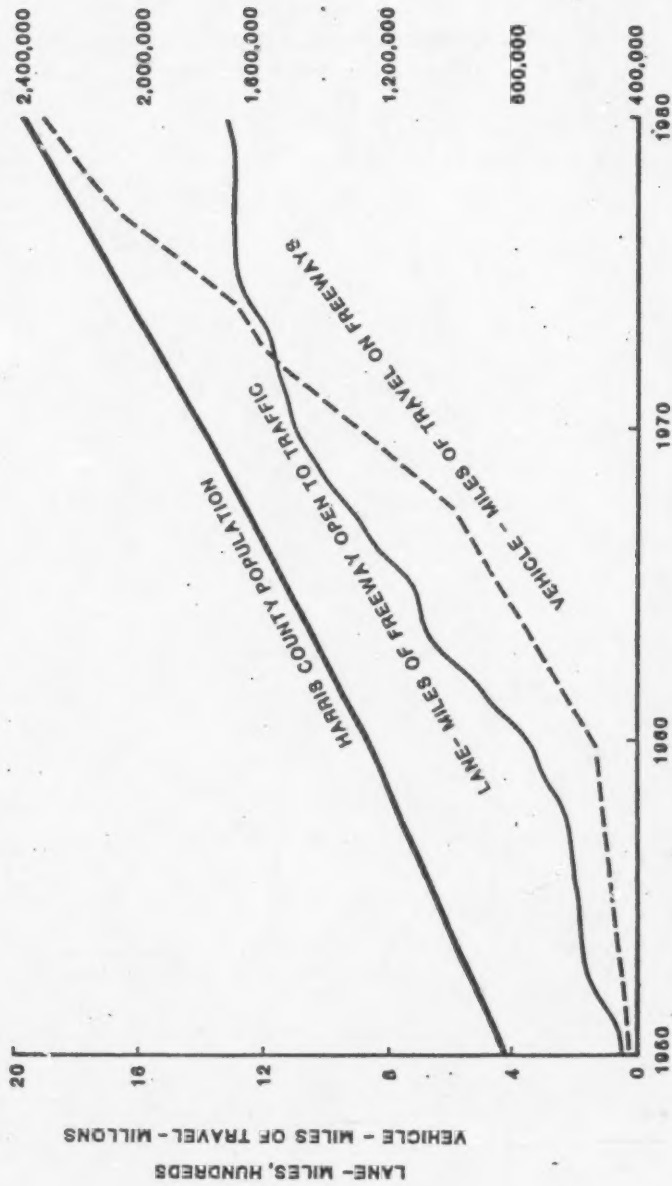
Houston's Transportation Needs

Initial plans for a system of freeways in Houston were developed shortly after World War II. By 1970 most of the major elements of the current system of freeways and roads were completed and Houston enjoyed a relatively favorable degree of mobility. However, as the population spiral took hold in the early and mid 1970s, this situation began to deteriorate. By the end of the decade, new freeway traffic had outstripped added capacity by a factor of almost 5 to 1. (Exhibit 1) Today this situation has deteriorated to the point where, on an average, many of our freeways each day are carrying at least twice the level of traffic for which they were originally designed. As a result, the average duration of traffic congestion city-wide has increased from less than two hours per day in 1968 to an estimated 7 1/2 hours in 1981. In several critical areas, congestion now extends continually for up to 12 to 14 hours per day. (Exhibit 2)

The economic cost of this level of congestion has become staggering. Based on estimated losses in productive work time for individuals and commercial vehicles as well as higher costs for gasoline and vehicle insurance, we estimate that Houstonians are paying a "congestion tax" of up to \$1.9 billion per year--or about \$800 per county resident. The related social and psychological costs are more difficult to measure but are equally compelling.

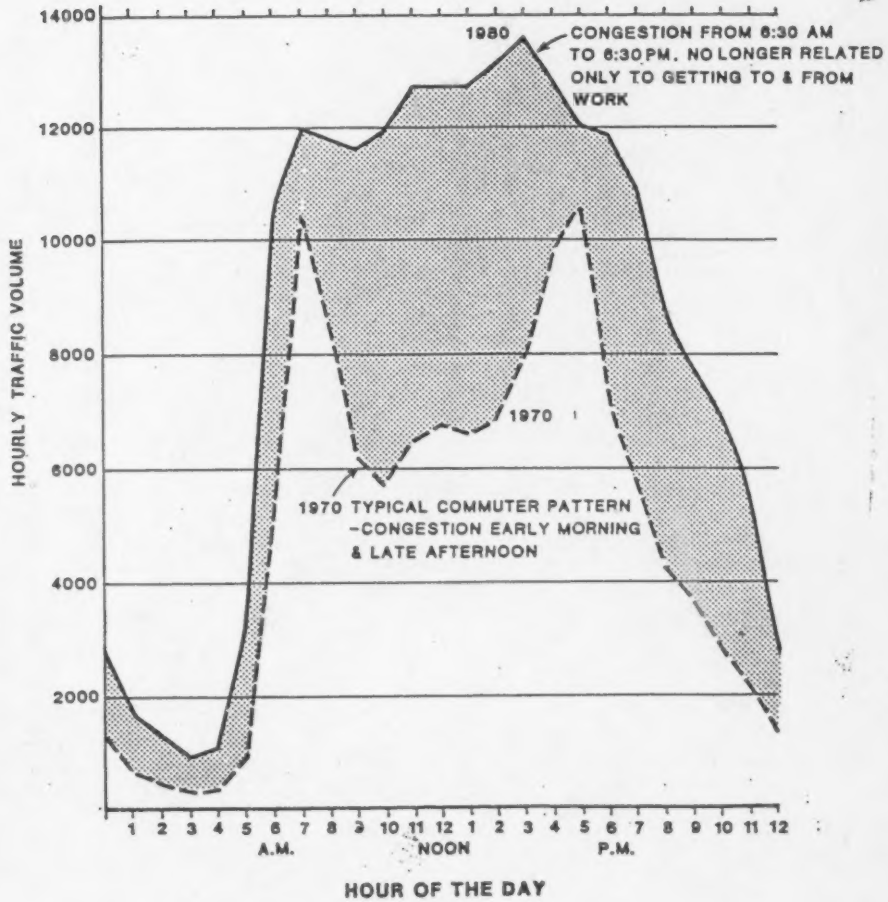
EXHIBIT 1

DEVELOPMENT AND USE OF FREEWAY SYSTEM IN HARRIS COUNTY (INCLUDES EXPRESSWAYS)



SOURCE: DATA COMPILED BY HOUSTON - GALVESTON REGIONAL TRANSPORTATION
STUDY OFFICE AND U.S. CENSUS

EXHIBIT 2
TYPICAL WEEKDAY HOURLY TRAFFIC VOLUME
AT THE SOUTHWEST FREEWAY AND SOUTH RICE



Of course, these transportation problems are not entirely unique to Houston. Other major growth cities face similar problems, although given its tremendous growth over the last two decades, Houston's problems are more severe than most. The response of business, individuals, and government in the greater Houston area in meeting this challenge have been clear and consistent. For example, in 1978, Harris County voters approved the creation of a Metropolitan Transit Authority (MTA) to develop and implement a modern region-wide system of public transportation. At the same time, the voters approved a special one-cent sales tax earmarked for transit improvements. More recently leading members of business and government in Houston have come together to produce a Regional Mobility Plan for the Houston Area, the first comprehensive community-wide transportation plan to be developed for the Houston area.

Regional Mobility Plan for the Houston Area

In 1981, the Houston Chamber of Commerce working with the various affected State and local transportation authorities, including the MTA, the Texas State Department of Highways and Public Transportation, the Texas Turnpike Authority, Harris County and the City of Houston began the task of creating together an integrated 15 year Regional Mobility Plan for the greater Houston area. The initial plan was completed in March 1982. Its principal objectives are:

- o To make the most of the transportation facilities already in place.
- o To encourage continued development of an integrated network of improvements necessary to improve Houston's urban transportation system.
- o To encourage the joint development, by all implementing transportation agencies, of mutually beneficial projects to facilitate efficient utilization of available resources.
- o To encourage coordinated private, business actions with government.
- o To develop projects which encourage the use of high occupancy vehicles in order to maximize system efficiency and reduce congestion.
- o To avoid unproductive competition among transportation modes using each mode to its best advantage.
- o To assess funding limitations and other constraints to the implementation of projects, such as material and labor, and to present the least cost system that will provide significant results.

Representatives from major business and community groups as well as experienced transportation professionals from the participating government agencies contributed to the development of the Plan. No reasonable options were excluded from consideration. The result is a plan of specific improvements which integrates all available transportation modes into a single efficient region-wide transportation system. From a professional standpoint, the key element of the plan is its recognition of the interdependence of its various components including freeways, arterial streets and public transit in producing a cost effective solution which fits the specific geography and personality of Houston.

Major components of the plan include:

- o 300 miles of new freeway facilities, some of which potentially may be toll facilities;
- o 30 miles of high capacity transit ways (including rapid rail technology where economically justified;
- o 170 miles of capacity improvements to existing freeways including construction of special facilities for express buses and high occupancy vehicles;
- o 1,400 miles of new arterial streets and roads;
- o 2,000 new buses and new bus maintenance facilities; and
- o at least 25 new park and ride lots.

The overall objective of the plan is to return mobility in Houston to the levels which existed in the mid-1970s. The total cost of the necessary improvements outlined above is conservatively estimated at \$16.2 billion in 1981 dollars. Over the 15 year period covered by the plan this will require annual capital expenditures of over \$1 billion each year.

We recognized from the start that existing funding commitments to transportation projects from all levels of government will not be adequate to implement the full scope for the improvements called for in the Regional Mobility Plan. Clearly, in order to meet the demands of Houston's transportation system, there must be a significant increase in funding at all levels of government. Although we recognize that closing the funding gap will not be easy, we believe that there is a growing consensus among our elected

representatives at the State and local level that new ways must be found to address Houston's transportation needs. As noted previously, the residents of Harris County voted in 1978 to impose a special one-cent sales tax specifically earmarked for mass transportation improvements. Aggressively pursuing other new sources of funding at the State and local level represents an integral part of the Regional Mobility Plan itself.

In addition to increased State and local commitments, however, substantial federal assistance will also be required to implement the improvements called for in the Plan. While we strongly support efforts to bring the federal deficit under control and recognize the need for restraints on federal spending to achieve this end, it will be important that cities like Houston experiencing major growth receive an equitable share of available funds. Ultimately, the participation of all levels of government, federal, State and local, will be required to build an integrated regional transportation system. Through the Regional Mobility Plan we have demonstrated our commitment at the local level to fund improved transportation in Houston. We need and ask the support of the Federal Government to help make the improvements called for in the Plan a reality.

Summary

We recognize and appreciate the fine leadership that this Committee has shown in the past in helping to build the greatest national transportation system in the world. We in Houston expect

to continue to do our fair share in improving this system and ask for your continuing cooperation and support.

We appreciate the opportunity to present this statement for the Committee's consideration and would be pleased to respond to any written questions or to provide any additional assistance which may be appropriate.

PUBLIC SERVICE RESEARCH COUNCIL

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Judicial Interpretation of Section 13(c) of the Urban Mass Transportation Act of 1964

OFFICERS

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I. Introduction

Section 13(c) of the Urban Mass Transportation Act of 1964 has been the subject of substantial litigation in the federal courts. Seven of the twelve U.S. Circuit Courts of Appeals and at least ten District Courts have decided cases interpreting Section 13(c). In addition, a Section 13(c) case is currently pending before the United States Supreme Court. Through their interpretation of this provision, a majority of these courts have extended substantial federal control over the field of local transit labor relations. The purpose of this memorandum is to explain (1) the provisions of Section 13(c); (2) the principal issues involved in Section 13(c) cases; (3) the ways in which federal courts have resolved these issues; and (4) the implications of these court decisions.

II. The Provisions of UMTA and Section 13(c)

The Urban Mass Transportation Act of 1964 (UMTA) is a federal grants statute providing financial assistance to local and state governments for mass transportation services in urban areas. At the time of its enactment, many private transportation companies in cities across the country were failing. The Act was intended to enable local and state governments to take over the responsibilities of these private firms.

Like most grant statutes, the provisions of UMTA are generally concerned with the types of grants available and the procedures for obtaining them. In addition to these provisions, however, the Act contains Section 13(c) which sets forth certain requirements which are designed to protect employees of recipient local authorities. These requirements are conditions to receipt of a grant. First, Section 13(c) requires "that fair and equitable arrangements are made, as determined by the Secretary of Labor, to protect the interests of employees affected by such assistance." These "arrangements" usually take the form of written agreements, so-called Section 13(c) agreements, between the transit authority and the union representing the employees, which are certified by the Secretary of Labor. Second, the protective arrangements are required to include provisions furthering certain specific objectives enumerated in the statute. These include the preservation of rights, privileges, and benefits under existing collective bargaining agreements and the continuation of collective bargaining rights. Third, Section 13(c) requires that the provisions of the protective arrangements be incorporated into the grant instrument between the local authority and the federal government. Section 13(c) thus contemplates three separate agreements in connection with a grant: (1) the Section 13(c) agreement or other protective arrangements between the local transit authority and the union; (2) the collective bargaining agreement between the authority and the union; and (3) the grant instrument between the authority and the federal government.

III. Judicial Interpretation of Section 13(c)

The federal courts have adopted two differing interpretations of these provisions. The minority view, expressly adopted by only one out of the seven U.S. Circuit Courts of Appeals which have addressed the issue, holds that the effect of these provisions is to require the Secretary of Labor to ensure that the labor policies of local transit authorities meet the criteria set forth in the statute before they receive grants. If the Secretary determines that an authority meets the criteria, it may receive a grant; if it does not, it may not receive a grant. Should any authority which once met the requirements subsequently fail to do so, any further grants to it could be barred. No direct federal regulation of transit labor relations would occur. A state could, if it chose to, conform to the requirements of Section 13(c) in applying for a grant, but it would be under no obligation to do so.

In stark contrast is the view of the overwhelming majority of the federal courts. They hold that Section 13(c) grants to employees of recipient transit authorities all the labor protections enumerated in Section 13(c) as federal rights. Moreover, employees would be able to bring suit to enforce these rights in federal court. Many decisions even suggest that any state laws contrary to the provisions of Section 13(c) would be superseded.

The effect of the majority interpretation is to federalize local transit labor relations. The Secretary of Labor determines initially what contract provisions are "fair and equitable." Thereafter, federal courts frequently assume the responsibility to fill in the details and resolve disputes arising from local transit employment contracts.

The majority interpretation effects a radical change in local transit employment relations. Absent Section 13(c), there is no dispute that these transit labor relations would be purely a matter of state concern. State governments are expressly exempted from the extensive regulation of labor relations provided for in the National Labor Relations and Wagner Acts and do not otherwise come under federal control. In addition, state courts alone would be responsible for resolving disputes arising from contracts between local transit authorities and their workers.

The courts reaching this interpretation do not base their decisions on any express provision in Section 13(c) that its protective measures are intended to be federal rights enforceable in federal courts as no such provision exists. Instead, the courts base their interpretation on the presumed intention of Congress to create such rights and thereby preempt the field of local transit labor relations. Yet, no such intention is set forth expressly in the legislative history of UMTA. Indeed, the central thrust of the legislative history is to defer to state control. Few of the courts which have found federal rights in Section 13(c) have examined this legislative history at any length.

The impact of the majority interpretation of Section 13(c) on transit labor relations is evident in the case of Jackson Transit Authority and the City of Jackson, Tennessee v. Local Division 1285, Amalgamated Transit Union, AFL-CIO-CLC, 650 F.2d 1379 (6th Cir. 1981), currently pending before the Supreme Court. In 1966, the Jackson Transit Authority was created to take over the operations of the then-defunct Jackson City Lines, Inc. In that same year, it applied for a grant under UMTA. Pursuant to Section 13(c), it entered into a Section 13(c) agreement, the Secretary of Labor certified it, and the Authority entered into a grant contract with the federal government. The amount of the grant was \$279,000. Nine years passed during which the Authority concluded successive collective bargaining agreements with the Union representing its employees. No further grants were received.

In 1975 the Authority entered into another collective bargaining agreement with the Union. Subsequently, however, the Authority notified the Union that the agreement was of no effect because, among other reasons, the party which had negotiated the agreement on the Authority's behalf lacked the power to do so. The Authority offered to resume negotiations but indicated that none of the cost-of-living benefits provided for would be paid until a new agreement was reached. The Union brought suit in federal court to enforce the negotiated contract under the Section 13(c) agreement the Authority entered into nine years before.

The U.S. District Court upheld the position of the Authority that the claim of the Union was an ordinary contract claim over which the federal courts had no jurisdiction, and that the Union had no rights under Section 13(c). The Circuit Court of Appeals, however, reversed. Although the Authority had entered into its Section 13(c) agreement nine years before, and although it had not accepted a federal grant under this or any other such agreement in nine years, the Court of Appeals held that the Union enjoyed federal rights under the Section 13(c) agreement and that the federal courts therefore had jurisdiction of the Union's claim. Thus, federal, not state, courts were to determine whether the Authority had breached its agreements with the Union and were henceforth to determine the rights of both parties under any subsequent agreements they entered. Under the Sixth Circuit view, the state lost substantial control over its own transit employment relations. A decision from the Supreme Court is expected this fall.

IV. Implications of the Judicial Interpretation of Section 13(c)

The implications of Section 13(c) for local control of urban transit systems are indeed far-reaching. With their power over their contracts with their employees severely limited, local authorities lose considerable control over the costs of their systems, since labor generally represents a substantial element of these costs.

Although few courts have resolved the issue directly, several have suggested that state statutes contrary to the requirements of Section 13(c) or a Section 13(c) agreement are without effect. States which

have at some time received an UMTA grant thus lie virtually without recourse against these federal judicial interpretations of Section 13(c).

The scope of Section 13(c) is not yet clearly defined by these interpretations and it remains to be seen what rights the federal courts will read into this provision. In briefs filed with the Supreme Court in the Jackson case, the Union argued that Section 13(c) guarantees transit employees no worse terms than those which were embodied in the collective bargaining agreement in effect at the time an UMTA grant was received. Moreover, the Union asserted that Section 13(c) required transit authorities not only to negotiate contracts with their employees, but actually to enter into such contracts, regardless of the financial condition of the transit authority or its desire to continue transit operations. Thus, section 13(c) has been interpreted to deprive states of the power to determine for themselves the structure of their local transit labor relations.

Principal Circuit Court of Appeals
Decisions Interpreting Section 13(c)

Local Division No. 714 v. Greater Portland Transit District, 589 F.2d 1 (1st Cir. 1978).

Local Division 589 v. Massachusetts, 666 F.2d 618 (1st Cir. 1981).

Local Division 580 v. Central New York Regional Transportation Authority, 556 F.2d 659 (2nd Cir. 1977), dism'd on rem., No. 77-CV-45 (N.D.N.Y. 10/19/77), op. vacated as moot, 578 F.2d 29 (2nd Cir. 1978).

Local Division 1285 v. Jackson Transit Authority, et al., 650 F.2d 1379 (6th Cir. 1981), cert. granted, ____ U.S. ____, 102 S. Ct. 632 (1982) (No. 81-411).

Division 1235 v. Metropolitan Transit Authority, ATE, 650 F.2d 1389 (6th Cir. 1981).

Local Division 519 v LaCrosse Municipal Transit Utility, 585 F.2d 1340 (7th Cir. 1978).

Division 1287 v. Kansas City Area Transportation Authority, 582 F.2d 444 (8th Cir. 1978), cert.denied, 439 U.S. 1090 (1979).

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TRANSIT ASSISTANCE ACT OF 1982

WEDNESDAY, APRIL 28, 1982

U.S. SENATE,
SUBCOMMITTEE ON HOUSING AND URBAN AFFAIRS,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, D.C.

The subcommittee met at 9:30 a.m., in room 5302 of the Dirksen Senate Office Building; Senator Richard G. Lugar (chairman of the subcommittee) presiding.

Present: Senators Lugar, Garn, Tower, Heinz, D'Amato, Chafee, Brady, Riegle, Proxmire, Dixon, and Sasser.

Senator LUGAR. This subcommittee meeting will come to order.

We are pleased once again to have hearings today on Senate bill 2367, the Transit Assistance Act of 1982; and Senate bill 2377, the Mass Transportation Act of 1982.

We have had 1 day of hearings preceding this one in which we heard from the Secretary of Transportation and from persons who had strong opinions on one particular section of the act.

Today we are privileged to hear witnesses who will generally discuss this legislation from the standpoint of those who are operating successful systems in this country and from groups who have a vital interest in urban America.

The first panel that we will hear this morning will include Richard Ravitch, chairman of Metropolitan Transportation Authority, New York; Dan Arnold, chairman of the Houston Metropolitan Transportation Authority of Houston, Tex.; James R. Maloney, executive director of the Port Authority of Allegheny County, Pittsburgh, Pa.; and Richard Page, general manager of the Washington Metropolitan Area Transit Authority and he will also represent the American Public Transit Association. And accompanying Arnold will be an old friend of the committee, Gov. John Connolly will be here, and at this point it would be appropriate for those panel members to come to the witness table and the Chair would like to call upon the distinguished Senator from Texas, Senator John Tower, for an opening comment this morning.

OPENING STATEMENT OF SENATOR TOWER

Senator TOWER. Thank you. Mr. Chairman and members of the committee, I'd like to join you in welcoming the members of our first panel this morning, Mr. Ravitch, Mr. Arnold, Mr. Maloney. As you've noted, Mr. Arnold is accompanied by John Connolly, former Governor of Texas and former Secretary of the Treasury, who is a Houstonian and a very active supporter of mass transit development in Houston.

It's important to note that this panel includes representatives from two major population centers of the Northeast and another of the Southwest. While mass transit was at one time largely a phenomenon of the centrally concentrated industrial cities of the Northeast, it's now clearly a concern of cities in other regions as they experience unrivaled population growth and economic development which makes existing transportation systems inadequate.

It's my belief that as we address proposals for authorization of the Urban Mass Transit Administration we must arrive at an equitably balanced national program which concomitantly supports the existing transit systems of the Northeast corridor while giving needed support to new systems required by the phenomenal growth in cities such as Miami, Atlanta, Houston, and Los Angeles. We must carefully study two different funding questions: that of initial capital investment for development of transit systems; and that of block grant funding for improvement and maintenance of existing systems.

This block grant formula should include factors to take into account projected increases in population and system use.

Finally, Mr. Chairman, I look forward to hearing Mr. Arnold of the Houston Transit Authority to share with our colleagues this morning the strong commitment made by the city of Houston to improve mass transit. The Houston regional mobility plan is a long-range multifaceted strategy which addresses the many severe transportation problems facing Houston. This plan has the support of State and local authorities as well as the overwhelming support of the people of Houston. This, I submit, is an excellent example of people working together responsibly to address a major problem which faces many of our urban centers today.

Mr. Chairman, when I was born in Houston a few short years ago, the population of that city was 230,000. It is now 10 times that. So in that very, very short period of time, you can see that the population of Houston has grown geometrically and it has presented that community with certain problems. Thank you, Mr. Chairman.

Senator LUGAR. Thank you very much, Senator Tower.

Senator D'Amato, do you have an opening comment this morning?

OPENING STATEMENT OF SENATOR D'AMATO

Senator D'AMATO. Thank you very much, Mr. Chairman.

First, I'd like to commend our chairman, Senator Lugar, who has been in the forefront in addressing the issue of mass transportation and commend our panelists for taking their time to be here. I think their testimony is vital in that it will afford the subcommittee members information from those who are on the battle line, who have to deal with the problem, who have to implement, and have to live with this legislation.

I think that the Federal Government and mass transit is at a crossroads, so to speak. Either the Federal government is going to promote mass transit and as a result further other major goals and objectives, or is going to withdraw its historical support and witness a serious deterioration in the mass transit infrastructure. I think we have to be aggressive and openminded and work together

in a spirit of compromise and accommodation. I think that doctrinering and sloganeering is not enough and is not fair to the people who depend upon mass transportation.

I don't believe it does justice to the people of this Nation to take the simplistic viewpoint that operating subsidies by their nature encourage waste and encourage practices of nonproductivity. That is simplistic sloganeering and should not be part of the deliberative process in our coming together with the formula that will address the urban mass transit needs and, at the same time, recognize the budgetary constraints under which we work.

So I commend Senator Lugar for holding these very necessary hearings so we can have an opportunity to deal with this issue in a realistic manner and to hear the testimony that is vital from those who face these problems on a day-to-day basis. Thank you.

Senator LUGAR. Thank you, Senator D'Amato.

Senator Brady, do you have an opening comment this morning?

OPENING STATEMENT OF SENATOR BRADY

Senator BRADY. I thank the chairman and my distinguished colleagues of the committee. It's indeed an honor and pleasure to be present this morning to hear the testimony of the witnesses on the proposed legislation.

Mass transit is a very important issue in New Jersey and I look forward to hearing the testimony and I welcome my friend, former Secretary Connolly, and Mr. Ravitch to the hearing today. Thank you very much.

Senator LUGAR. Thank you, Senator Brady.

Senator Heinz, do you have an opening comment?

OPENING STATEMENT OF SENATOR HEINZ

Senator HEINZ. Just some brief observations, Mr. Chairman.

First, I want to join other members of the committee in commending you in moving so promptly on these hearings both Monday and today. I regret I was unable to be here on Monday because I had to be up in our State of Pennsylvania. As a matter of fact, I was up in the State of Pennsylvania with Bill Millar and Jim Maloney who is the executive director of the Port Authority of Allegheny County, and I'm here in part, but only in part, to welcome Bill Millar who is representing our transit authority here today. I know he will give us some very important testimony.

I would make just three observations. No. 1, it's often assumed that mass transit is important only to urban areas of the North. It is very important to urban areas like Pittsburgh, Philadelphia, New York, and Chicago. It is in many respects our lifeblood. It is the means by which we move vast numbers of people who if we didn't have that means available to us would be cramped, crowded, and squeezed into very narrow streets that were designed and built literally for the horse and buggy days, but it is also true, Mr. Chairman, that mass transit is vital to other areas of the country, our Sun Belt States, where they are now being caught up in tumultuous growth. I suppose Los Angeles is the best example of a city that's grown by leaps and bounds and has never been able quite to solve the mass transit dilemma. I see John Connolly from Texas

here. I think it's very good that we have the kind of national interest now in mass transit that perhaps we should have had many, many years ago.

The second observation I would make is that we've had a mass transit partnership between the Federal Government, the State, local government and the people who pay the fares for some 17 years. It's been a very productive partnership. It's worked well. We have built transit systems where none existed before. Those transit systems have reduced our dependency on imported oil from abroad and we've been a little bit complacent about that last point, Mr. Chairman. We've been riding high on an oil glut for the last year or so, but the OPEC cartel I don't think is going to let us ride high much longer. They have been working very hard to cut back production.

You read the stories that the Saudis have cut back 10 percent. They've cut back 33½ percent. They've gone from 9 million barrels to 6 million barrels and they may be producing well below that. It's nice propaganda when the Saudis say we've only cut 10 percent because that makes everybody in this country think that they're sweet, gentle people, and maybe they are, but their cut is at least a third and nobody should be deluded by what that will mean for our long-term energy requirements which mass transit, if properly implemented, can diminish substantially.

Finally, Mr. Chairman, I want to commend Senator D'Amato in particular for introducing what I believe is a very good bill, S. 2377. It's a good bill not only because he introduced it or because I cosponsored it; it's a good bill because I think it does maintain the essence of the partnership that I spoke of a moment ago, which included an understanding that if we're going to provide, as the President proposes to do, capital assistance, bus replacement, vehicle replacement which everybody agrees we should have, it also makes sense to provide the funds to maintain and properly operate that equipment.

That is where there is a difference with the President. The President, as evidenced by Secretary Lewis here on Monday, is opposed to operating assistance. But I think we should recognize that if there is no money for the maintenance of the buses that the Federal Government pays for—75, 80, 90 cents on the dollar, depending on the formula—then we're giving an unfortunate incentive to allow our capital plant, our capital assets, to waste away.

We need to treat maintenance at a minimum—maintenance is operating assistance—equally with capital. Otherwise, we will be wasting the taxpayers' dollars. None of us—the President, Secretary Lewis—none of the people on either side of this panel want to see waste, fraud, and abuse, and that's where I think Senator D'Amato's bill is intelligent, sensitive, and forward looking. It is also conservative because it will give us the means and the incentives to conserve those things that are extremely valuable.

Mr. Chairman, I thank you for the opportunity to make this statement and I appreciate having such a distinguished panel.

Senator LUGAR. Thank you very much, Senator Heinz.

Senator Dixon, do you have an opening comment or a word of greeting to our panel this morning?

Senator DIXON. Well, I welcome the panel, Mr. Chairman. I made an opening statement Monday and I'm delighted to be here to participate in this hearing.

Senator LUGAR. You'll stand on your first statement?

Senator DIXON. I stand on my first statement.

Senator LUGAR. Very good. We're delighted indeed that you're here.

Let me suggest, without cramping the style of any of you, and we are grateful that your statements came prior to the hearing so that members have had an opportunity to examine them, but if you could try to confine your opening statements to 10 minutes of time, this would be very helpful because I know that members of this subcommittee will want to question you and we have tried to make a comprehensive hearing of this with 10 distinguished witnesses today, each of whom we would like to give a good forum. So if you could, in the order that I introduced you, first of all, that would be Mr. Ravitch, Mr. Arnold, Mr. Millar, and Mr. Page, testify in that order for about 10 minutes each, we would appreciate it. Would you commence your testimony, Mr. Ravitch?

STATEMENT OF RICHARD RAVITCH, CHAIRMAN, METROPOLITAN TRANSPORTATION AUTHORITY, NEW YORK

Mr. RAVITCH. Mr. Chairman, I appreciate the opportunity to appear before this committee here today and I would like to summarize my written statement in the 10 minutes that you suggested. I would also ask that my statement appear in the hearing record.

We in New York recognize the budgetary difficulties that the Federal Government faces, that resources are not unlimited, and at the same time we recognize that our mass transit system in New York is sui generis, in that the economy of our city and our region cannot function without a functioning mass transit system; 85 percent of the people who come to work in the central business district every day use mass transit. We're responsible for moving 5.5 million passengers a day on the various systems, the New York bus and subway systems, the Long Island Railroad, and the Westchester commutation system, and it's an extraordinary burden.

These systems suffered from a long period of capital disinvestment starting with the periods in which they were privately owned. In the process of becoming financially insolvent, these private companies stopped spending money on capital. Despite the growth of section 3 Federal aid for capital assistance during the past decade, it was nowhere near enough to meet the capital needs of the New York City system.

As a matter of fact, by normal business standards, we were spending about one seventh of what prudence would dictate that one would spend on a capital plant of our size and scope and complexity.

Recognizing that there were no fairy godmothers in Washington to provide increased funds, we proposed in the spring of 1981 and the legislature enacted a law for the first time to authorize MTA to issue bonds secured by our fare box revenues and our State subsidies, and in a combination of ways, primarily that one, we expect to be spending about \$7.9 billion over the next 5 years on the im-

provement of all those transportation systems for which we are responsible.

At the same time, we are obviously concerned about the cost to the rider of our system, not only because of the fact that a large number of our riders are people with limited income, but, as recognized by the business community in their support of our legislation in Albany and of special taxes to support mass transit, because New York's magnetism as an employer would be adversely affected if the fare reached levels that had an adverse impact on ridership.

Therefore, we have consistently expressed an understanding of the budgetary constraints that the Federal Government faces but have opposed the reductions in operating assistance.

We strongly support the provisions in Senator D'Amato's bill which permit the use of the new grant for operating purposes as well as capital, although we would like to make clear that we feel that the amount that can be used on operating should be limited. We don't want a situation in which local political pressures for us or any other transit authority to use all available funds in operating purposes and once again go through the cycle of ignoring the capital needs of the system.

TRANSIT AID BASED ON NEED

We applaud the fact that the administration has finally recognized that the formula of distributing mass transit aid ought to be based on need. We have been fighting for that since the inception of this program as you gentlemen well know. I regret, however, very much that having taken that position that they've put an artificial, arbitrary cap on what New York can receive, which is far below what their own formula would ascribe to us given the basis of our need.

We have a strong feeling that the amount of discretionary funds in the administration bill perhaps be increased somewhat, although at the present program level of funding proposed for authorization we feel less strongly about that than we do about the formula and the arbitrary and capricious cap. An increase in the total program level is needed to provide room for any expansion in discretionary funding.

We have several other issues about which we feel quite strongly. There are constraints in existing law which adversely impact our ability to spend our own money, money that we obtain from the taxpayers of New York or from the farepayers of New York. Right now Federal law does not permit us to use funds raised through the sale of revenue bonds as local match. We think that's quite inconsistent with the stated intention of the Federal Government to encourage local governments to spend more of their own money.

We also believe very strongly that where we're spending money raised from our own taxpayers or our own farepayers that we should be permitted to spend that money unfettered by Federal rules and regulations. If we are to have the burdens of the New Federalism as represented by reduced Federal spending, then we should have the benefits of the new federalism through reduced Federal involvement in regulation. The administration has proffered very little in that direction and we have submitted to you,

Mr. Chairman, a proposed amendment to the law which we respectfully urge your consideration of that would make it clear that New York State laws could be used when monies raised from New York are spent for capital procurement.

If you will permit me, I would like to quickly mention one item which I recognize is not within the jurisdiction of this committee, but is critical to the problems of mass transit in New York, and that is the safe harbor leasing provision which is before the Finance Committee.

That provision, which in your wisdom you included in the tax bill last year, will provide enormous incentive for local government to spend more money on capital. We are going to be spending over \$2.5 billion New York State money on the acquisition of mass transportation commuting vehicles and we believe we should have the benefits that the tax law makes available to every private form of transportation, and urge, given your interest in mass transit, that you might be helpful in that regard.

Finally, let me say in conclusion that we respect very much your desire to move quickly on this legislation. It is important that there be clarity and that the ground rules be known for those of us who are responsible for setting fares, establishing budgets, and negotiating labor contracts. In that regard, I want to commend and support the level of funding proposed in Senator D'Amato's bill. While that is considerably less than what we had hoped two or three years ago would be the general level of Federal funding it represents at least a consistency with the position that this administration took just 1 year ago. At that time we reluctantly accepted the reduction from \$5 billion to \$3.7 of funding of authorization for mass transit, made our plans, set our fares and appealed to our legislature for local tax revenues based on the assumption that that would be the level of funding.

The further reductions proposed by the administration put a severe crimp in those plans and I respectfully submit to you not only cause us to look for higher fares in our region but present severe problems to our economy because the rate at which we must raise that fare. So we hope very much that you would consider in your speedy deliberations of this bill the higher level of authorization proposed by Senator D'Amato. Thank you, Mr. Chairman.

[Complete statement follows:]

STATEMENT OF CHAIRMAN RICHARD RAVITCH, METROPOLITAN TRANSPORTATION
AUTHORITY

Mr. Chairman, my name is Richard Ravitch and I am Chairman of New York's Metropolitan Transportation Authority. I appreciate your Committee offering me time to testify on the need for mass transit legislation this year. My testimony will deal primarily with New York's needs, but as evidenced by the other witnesses today, transit needs are national in scope and we support legislation that will deal with them from a national perspective. The program structure you set in place must be flexible enough, and well funded enough, to deal with New York's need to rehabilitate its extensive rail and bus system, to permit a Houston or a Los Angeles to justify and undertake transit expansion, and to continue operations in smaller city and rural bus systems.

Let me spend a moment outlining New York's transit situation. The agency I head is responsible for operations and construction of transit facilities that serve some 5.5 million riders each day, including 85 percent of all peak hour travel into Manhattan's Central Business District. These operations include the New York City subway and bus system, The Long Island Rail Road, commuter rail services now op-

erated by Conrail in our northern and western suburbs, and the suburban bus services in Nassau County.

In my two and one-half year tenure as Chairman, my efforts have been focused on establishing a sound financial base for this system's operation and improvement. In recent months, the New York State Legislature has responded with major legislation to permit a capital program largely financed with non-Federal sources, including MTA bonds serviced by farebox revenues and State subsidies. The Legislature has also provided for a series of State-imposed taxes dedicated to financing transit operations. These taxes supplement existing local and State subsidies provided through appropriations and through automobile facility surpluses. Under the provisions of last year's State legislation for capital improvement, our authority has developed and received approval of a \$7.4 billion program to rehabilitate and improve existing transit facilities and services over the next five years. In order to expedite progress on this program, the Legislature conferred extraordinary powers on the MTA, bypassing previous State and local controls and reviews. My major concern in regard to Federal legislation is that it provide assistance supportive to this expedited rebuilding effort.

Our needs for financing are great, and I am under no illusions that the Federal government is going to provide funds to meet the majority of our needs. I recognize the limitations and restraints under which you operate. Nevertheless, it is my duty as spokesman for New York's transit users to argue strenuously for as many Federal dollars as we can obtain. I will assure you that those dollars spent in New York will produce more transit benefits than they could if spent elsewhere, and could produce even more benefits with the program changes I will suggest.

PROGRAM STRUCTURE

We accept the general premise that the transit program will benefit from changing its structure from a largely discretionary basis to one in which most funds flow on a formula reflecting transit investment need. In designing this structure, two issues must be addressed. First, how much funding should be reserved for grants at the Secretary's discretion; and second, how much local latitude should be provided for operating assistance vs. capital investment.

With respect to the first point, the Administration's bill leans heavily towards the formula approach, limiting discretionary investments to 10 percent of the program, thus precluding serious consideration of new starts, major system extensions, or other special needs. At the funding levels proposed by the Administration, this restraint is justified. If the program is expanded to an adequate level—whether through Secretary Lewis' user fee plan or otherwise—then there should be consideration of new investment. Until then, I would urge that we restrict our budgets to the rehabilitation and improvement of systems now in place. This is the priority we have set for New York and we are far from the point where it would be prudent to reopen the question of our deferred projects for system extensions.

As to the second point, we support the principle that recipients should have some latitude to fund operations, but there should be limits. The formula grant that would go to all areas must address needs of many different urban and rural areas. To do so effectively, such areas need an option to use funds for operating aid where this is a more pressing need than further capital investment. At the same time, there need to be effective controls to prevent the diversion of historical levels of capital funds into operations, as happened in New York during the early 1970's under Section 3(h) of the law (the Beame shuffle) as it then existed. Recognizing the pressures that could exist for such a short-sighted diversion, a proposal to cap the use of formula grants for operating at a level equal to 1982 Section 5 operating funding seems to us a reasonable compromise. It would relieve the local budget strain of the Administration's proposed cutbacks without unwarranted diversion from capital needs.

PROGRAM LEVEL

Obviously, no program, however well designed, can function well without adequate funding. As I have stated, the funding levels in the Administration bill are not adequate to meet all the competing needs, and if a program were enacted at this level it should be structured to constrain investment to the rehabilitation of what is now in place. We recognize the need for Federal budgetary constraints across the board, and understand that this was the reason for last year's decision to reduce the transit program from the \$5 billion level previously contemplated to its current \$3.7 billion. Our local plans and programs were developed with this constrained level of Federal participation in mind, and we sought alternative sources of funds locally

and in the private sector to fill the gap. We question the fairness of any further rounds of cutbacks in the domestic discretionary programs while other areas of the budget such as entitlements and defense remain untouched. Everyone hopes for the success of the Administration's economic recovery program, but its long-run success is unlikely without greater attention to the public sector investment needed to support private sector growth.

In contrast to the Administration's bill, the proposed program levels in Senator D'Amato's proposal are closer to those we now have, and it is my understanding that the authorizing committee in the other body is considering an even higher starting point. With New York's needs as great as they are, I can assure you of our ability to spend wisely any funds that you can make available.

DISTRIBUTION FORMULA

Another critical element in any funding system is the formula for distribution of funds. In this regard, I take particular offense at the Administration's proposal for a formula that purports to reflect transit needs but arbitrarily "caps" New York at a level well below its formula entitlement. If they are to argue credibly that their formula is truly based on needs, how can they argue that needs in New York can be ignored and its formula funds distributed elsewhere? I hope that your Committee can develop a distribution formula that will treat our needs with greater fairness.

SAFE HARBOR LEASING

At the same time, recognizing that no Federal grant program is likely to meet our full needs, I would urge your support in assuring that Congress retains the transit-oriented features of the Economic Recovery Tax Act of 1981. These provisions have permitted New York and fourteen other communities to augment UMTA assistance through local efforts, encouraging these local efforts with the same type of tax benefits available to private sector investors in transportation equipment. The MTA five year capital program includes approximately \$500 million to be derived through equipment leasing, and we have begun the acquisition of new equipment in reliance upon the availability of these funds.

PROGRAM ADMINISTRATION

The Administration's legislation proposes a considerable simplification of the administration of the UMTA program, especially in the program development, application and approval phases. We strongly endorse such steps, which could give us the opportunity to speed up capital projects by as much as a year as compared with present UMTA practice.

Equal attention is needed to the process of implementing projects once they are approved. At present, all UMTA projects must be administered under Federal procurement statutes and regulations, with these regulations applying to both the Federal funds and the matching State or local funds. At the extreme, it has been argued that all local agency procurement must be subjected to Federal review since it is partially funded with Federal operating grants. The present system has proven to be extraordinarily cumbersome, with frequent Federal intervention and lengthy delays for bureaucratic reviews.

UMTA has attempted to deal with this problem through an administrative process of procurement certification, under which a local agency could be certified as capable of conducting procurement under Federal rules. I am pleased that MTA will be the first agency so certified, but I believe UMTA could go further, especially where we are expending nearly four local dollars for every Federal dollar in our capital program.

In its draft legislation, UMTA suggests such a concept in the case of buses, whereby a local agency could accept a fixed grant amount per bus and conduct its own competitive procurement under local rules to obtain the best deal possible for their own riders and taxpayers. While this specific proposal needs further study, the concept of greater State and local responsibility is correct. As a step in this direction, I have attached a proposed amendment to permit agencies such as MTA to manage all of their local funds under local rules rather than subjecting a share of them to Federal procedures. I urge your favorable consideration of this measure as a way to get the most transit improvement per taxpayer dollar.

SOURCES OF LOCAL MATCH

If this change is not adopted, a different amendment is needed to permit our use of MTA's revenue-backed bonds as local match for Federal funds, and I have also

attached proposed language to achieve this end. An outdated provision in the UMTA Act now precludes the use of system revenues as the source of matching funds, and this provision has been interpreted as prohibiting bonds supported in part by these revenues. If such bonds have been approved by State legislation as a funding source for our transit improvements, I see no reason to reject them as matching funds.

CONCLUSION

In conclusion, I would urge your Committee to act quickly on legislation. Authorizations are needed this year to support appropriations, and local agencies such as ours need the stability in our long-term funding plans that comes from advance knowledge of Federal funding levels over a multi-year basis. If the Federal/local partnership in transit is to continue to work effectively, both sides must act in a timely and appropriate fashion.

Summarizing our positions, I urge that this legislation provide adequate funding levels high enough to encompass national transit needs, that funding be distributed through a formula that is fair to all regions, and that the UMTA program be restructured to allow the use of available funds in an effective way.

I would be pleased to answer any questions the Committee has on this testimony or other matters regarding the MTA.

ATTACHMENTS

Amend Section 4(a) of the UMTA Act to read as follows:

Omit material in brackets, add new material in italics.

[The Secretary, on the basis of engineering studies, studies of economic feasibility, and data showing the nature and extent of expected utilization of the facilities and equipment, shall estimate what portion of the cost of a project to be assisted under section 3 cannot be reasonably financed from revenues—which portion shall hereinafter be called "net project cost."] The Federal grant for any such project to be assisted under section 3 shall be in an amount equal to 80 per centum of the [net] project's *capital* cost. The remainder of the [net] project cost shall be provided, in cash, from sources other than Federal funds. Such remainder may be provided in whole or in part from sources other than public sources, and any public or private transit system funds so provided shall be solely from undistributed cash surpluses, replacement or depreciation funds or reserves available in cash, or new capital. *For this purpose, new capital may include the proceeds of bonds issued by transit systems secured by a pledge of system operating and subsidy revenues so long as such pledge does not include the pledge of revenues provided by the Federal government.* No refund or reduction of the remainder of the (net) project cost shall be made at any time unless there is at the same time a refund of a proportional amount of the Federal grant.

REASON

Section 4(a) of the UMTA Act, which defines the Federal/local cost sharing of all capital projects under the Act, has been included in essentially its current form since the Act was passed in the mid-1960's. Its central concept of "net project cost" may have had relevance at that time, when most mass transit sources were in private hands and public policy demanded that such private operators contribute to the extent possible to capital projects improving their services.

In practice, however, mass transit services have become almost entirely a public function, and the net project cost concept no longer functions. All capital grants are made for the gross project costs, which equals the net project costs since there are no internally-generated funding sources. Administrative provisions do exist for crediting projects with revenues such as those generated by sale of surplus property.

The present language has, however, an unanticipated negative effect on a developing source of local capital financing. Certain transit properties have or plan to generate funds to undertake capital project through the sale of bonds backed by system revenues. To the extent these revenues include state or local subsidy payments or dedicated taxes, UMTA has permitted bond proceeds to be used as a source of local match. However, such use is conditioned on a promise that the Federal government would require proportional payback of the grant if future bond service payments were met from farebox revenues. Such a potential payback liability could adversely impact the marketability of revenue bonds and discourage the use of this source of

local financing. Such a result is contrary to the Federal interest in expanding local commitment and participation in the capital program.

AMENDMENT TO THE URBAN MASS TRANSPORTATION ACT

Renumbering existing Section 4(a) as 4(a)(1) and insert a new Section 4(a)(2) as follows:

The Secretary shall, upon request of a State or local public body or agency, waive the requirement for any remainder of the net project cost of a project to be provided from sources other than Federal funds, if such agency certifies that such project is part of a total program of capital projects developed in accordance with Section 8, that such program of capital projects is being undertaken by the agency within a consecutive five year time period, and that in such program of projects the non-Federal funding is equal to or greater than the anticipated Federal funding. In the event of such certification and waiver the Secretary shall make grants for projects in an amount equal to the full net project cost.

JUSTIFICATION

This amendment is intended to encourage greater local participation in the transit capital program by permitting local agencies greater flexibility in program management. Under the amendment, the agency would develop a single program of projects which meets Federal planning requirements in such areas of national concern as environment, civil rights, etc. Thereafter, for ease of administration, the program would be divided into the local portion and the Federal portion, with projects being administered only under the administrative scheme associated with the type of funds being used. All federal requirements would be met in conjunction with the federally funded projects, while all local funds would be spent in accord with local and State administrative requirements.

This simplification would reward those areas which commit to spend at least as much in local funds as are provided in federal funds over a five year period. In total, more transit investment would be generated, without giving up Federal control and accountability on the Federal funds involved. Matters of substantive Federal policy concern would be resolved through the cooperative planning process.

FORECAST OF
PUBLIC TRANSIT
OPERATING ASSISTANCE NEEDS

NEW YORK STATE SYSTEMS

1981/1982 — 1985/1986

Niagara Frontier Transportation Authority	- Buffalo Area
Rochester-Genesee Regional Transportation Authority	- Rochester Area
Central New York Regional Transportation Authority	- Syracuse Area
Capital District Transportation Authority	- Albany Area
Westchester County Department of Transportation	- Westchester County
Metropolitan Transportation Authority	- New York Metropolitan Area

APRIL, 1982

I. INTRODUCTION

PUBLIC TRANSPORTATION IN NEW YORK STATE

The providers of public transportation in New York State again are faced with operating assistance requirements of historic magnitudes. This is not a new phenomenon. Every year, we have worked closely with State and local governments to deal with these problems, and yet, every year we are forced to begin the process all over again.

The importance of public transportation in the urban infrastructure is well documented. This report does not attempt to add to the wealth of information or the wisdom of public investment in mass transportation. Rather, the report presents the estimated requirements of the larger public transit systems over the next several years. It represents a careful analysis and judgment by the providers of public transportation services and reflects assumptions based upon the fiscal conditions that prevail at federal, state and local levels in 1982. In 1981, the Legislature enacted comprehensive legislation designed to provide continued support for public transportation. This assistance has proved to be invaluable, but it does not provide enough money to continue services at reasonable levels and at affordable user costs. In fact, the program, as enacted, has made it difficult to conduct our operations on a businesslike basis because we are not able to plan our activities more than a few months in advance.

In spite of strenuous and effective local efforts to contain costs through trimming of unproductive services, aggressive labor negotiations, and firm administrative measures, the problem of cost growth exceeds our ability to manage within existing resources. Inflation, for example, has been out of control. Many of our areas are faced with economies that are not growing. Fuel costs have escalated rapidly as have costs for power, materials, and equipment. The phasing out of federal aid is now adding to an already untenable situation. The nature of the transit business is such that operations produce an annual growth in cost while revenues do not grow commensurately; in fact, some of these revenues are even declining. Solutions which have appeared to be comprehensive have not, in fact, generated the revenues anticipated.

A continuing partnership of transit operators and elected public officials must deal with the issue of transit funding on a long term basis. We must produce funding levels which are adequate and which are based on funding sources which are both predictable and collectible. Ideally, these sources should be dedicated to transit and sensitive to inflation. The alternative is to address the issue annually, usually in a crisis atmosphere.

In order to put our requirements into perspective, the New York State transit operators have produced a consolidated

statement of our financial projects for the next several years. We have used assumptions which are consistent wherever possible and, hopefully, conservative. This document represents our best estimate of transit needs on a statewide basis. We look forward to working with you in producing a solution to these issues which will let us get back to the business of providing quality service at reasonable cost to our constituents.

II. STATEWIDE SUMMARIES

FORECAST OF OPERATING DEFICITS FOR NEW YORK STATE TRANSPORTATION AUTHORITIES

(In Millions)

<u>Authority</u>	<u>FISCAL YEAR ENDING</u>				
	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>
Niagara Frontier	\$ -	\$ -	\$ 8.3	\$ 12.3	\$ 15.0
Rochester-Genesee	-	-	3.0	6.1	8.6
Central N.Y.	.1	.4	2.8	4.4	5.7
Capital District	-	.5	3.3	5.6	7.4
Westchester	-	3.4	6.3	9.4	12.2
MSBA(MTA)	-	2.7	5.7	8.8	12.0
Subtotal	<u>.1</u>	<u>7.0</u>	<u>29.4</u>	<u>46.6</u>	<u>60.9</u>
MTA/NYCTA	-	76.5	318.7	589.6	829.6
MTA/SIRTOA	-	.7	.9	1.8	2.8
MTA/Commuter RR	<u>31.8</u>	<u>131.8</u>	<u>218.3</u>	<u>305.0</u>	<u>388.3</u>
Subtotal	<u>31.8</u>	<u>209.0</u>	<u>537.9</u>	<u>896.4</u>	<u>1,220.7</u>
Grand Total	<u>\$ 31.9</u>	<u>216.0</u>	<u>567.3</u>	<u>943.0</u>	<u>1,281.6</u>

ASSUMES NO FARE INCREASE

II. STATEWIDE SUMMARIES

FORECAST OF OPERATING DEFICITS FOR
NEW YORK STATE TRANSPORTATION AUTHORITIES

(In Millions)

<u>Authority</u>	<u>FISCAL YEAR ENDING</u>				
	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>
Niagara Frontier	\$ -	\$ 2.9	\$ 4.1	\$ 6.2	\$ 6.6
Rochester-Genesee	-	-	1.4	4.6	7.1
Central N.Y.	.1	.4	2.3	3.3	4.0
Capital District	-	-	2.2	3.8	4.9
Westchester	-	2.3	2.7	3.5	3.9
MSBA(MTA)	-	1.5	1.9	3.6	4.0
Subtotal	<u>.1</u>	<u>7.1</u>	<u>14.6</u>	<u>25.0</u>	<u>30.5</u>
MTA/NYCTA	-	8.2	114.7	317.6	421.6
MTA/SIRTOA	-	.4	-	.6	.9
MTA/Commuter RR	<u>31.8</u>	<u>99.1</u>	<u>150.1</u>	<u>198.3</u>	<u>219.9</u>
Subtotal	<u>31.8</u>	<u>107.7</u>	<u>264.8</u>	<u>516.5</u>	<u>642.4</u>
Grand Total	<u>\$ 31.9</u>	<u>114.8</u>	<u>279.4</u>	<u>541.5</u>	<u>\$ 672.9</u>

ASSUMES 8.5% PASSENGER FARE INCREASE EACH YEAR BEGINNING IN 1983.

SUMMARY OF FARE REQUIREMENTS
AND EXPENSE RECOVERY

<u>Authority</u>	<u>Present Fare</u>	<u>Recovery of Expense By Present Fare</u>	<u>1985/86 Fare For Balanced Budget</u>
Niagara Frontier Transportation Authority	\$.50	48%	\$ 1.00
Rochester-Genesee Regional Transportation Authority	.70	52%	1.20
Central New York Regional Transportation Authority	.50	48%	1.10
Capital District Transportation Authority	.50	44%	1.00
Westchester County Department of Transportation	.75	62%	1.30
New York City Rapid Transit Authority	.75	59%	1.36
Staten Island Rapid Transit Operating Authority	.75	40%	1.21
Commuter Rail Roads (MTA)	-	53%	101%*
Metropolitan Suburban Bus Authority	.75	50%	1.20

NOTE: No provision for price elasticity reflected in fare level changes. Commuter Rail Roads do not have a basic fare. Fares are based upon distance traveled.

*Percent increase over current fare.

III. ASSUMPTIONS

1. Inflation Rate - annual increase at 8.5%
2. Level of service - no change from current status (except for commitments such as NFTA Light Rail implementation)
3. Federal Aid - phase out according to published figures
4. 18(b) State Aid - no change
5. Gross Receipts Tax State Aid - annual growth at 8.5% (matches inflation)
6. Fare Levels:
 - a. current fares/no resistance
 - b. 8.5% annual increase to keep pace with inflation/no resistance
 - c. sufficient annual increase to fund deficit/no resistance
7. Auxiliary Services - included in total projection
8. Assumes no significant local share requirements for capital projects

IV. NIAGARA FRONTIER TRANSPORTATION AUTHORITY
(\$ Millions)

<u>Fiscal Year Ending March 31</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>
Operating Costs	32.6	35.4	38.4	44.8	52.1
Annual Increase	N/A	8.5%	8.5%	16.7%	16.3%
Revenues	15.6	15.5	15.5	15.5	18.3
% of Budget	47.8%	43.8%	40.4%	34.6%	35.1%
Federal Aid	9.0	7.9	3.6	5.3	6.6
% of Budget	27.6%	22.3%	9.4%	11.9%	12.7%
NYS Taxes & Spec. Appro.	3.8	7.3	6.8	7.4	8.0
% of Budget	11.7%	20.6%	17.7%	16.5%	15.4%
NYS Operating Assistance	2.4	2.9	2.4	2.4	2.4
% of Budget	7.4%	8.2%	6.2%	5.3%	4.6%
Local Assistance	1.8	1.8	1.8	1.8	1.8
% of Budget	5.5%	5.1%	4.7%	4.0%	3.5%
Other Revenue	--	--	--	--	--
% of Budget	--	--	--	--	--
a. Current Fare	.50	.50	.50	.50	.50
Total Revenue & Assistance	32.6	35.4	30.1	32.5	37.1
Unfunded	--	--	8.3	12.3	15.0
% Unfunded	--	--	21.6%	27.7%	27.7%
Total %	100%	100%	100%	100%	100%
b. Fare Increase at 8.5% (Rounded Off)	.50	.55	.60	.65	.70
Revenue Increase	--	(2.9)	4.2	6.1	8.4
Remaining Unfunded	--	2.9	4.1	6.2	6.6
c. Fare Level Required to Fund Full Deficit	.50	.50	.75	.90	1.00

IV. NIAGARA FRONTIER TRANSPORTATION AUTHORITY

Operating cost increases in FY 85 and FY 86 exceed 8 1/2% due to increased costs attributable to partial inauguration of new light rail rapid transit system during FY 85 and a full year's cost in FY 86.

Revenues reflect a constant level of fares until FY 86, when additional revenues are anticipated from the combined bus/light rail rapid transit system. Although the light rail rapid transit system will be partially operational in FY 85, no additional revenues are reflected as the initial operation will be in a fare-free zone.

Estimated Federal operating assistance available for FY 83-86 was determined as follows:

Balance available from Federal FY 81	\$ 7,076K
Estimated Federal FY 82 allocation, per APTA's December 17, 1981 release	8,772K
Estimated Federal FY 83 allocation based on annual- ization of the 1980 half year allocation per APTA's December 17, 1981 release and application of a two- thirds factor thereto	5,049K
Estimated Federal FY 84 allocation equal to one-third of the annualized 1980 base mentioned above	2,524K
Total estimated availability	<u>\$23,421K</u>

NYS Tax Assistance is based upon the 1981-82 Local Assistance bill which allocated \$4,770K to NFTA for the period ending June 30, 1982, or a period of five quarters. Thus, 80% (\$3,816K) has been allocated to FY 82 and 20% (\$954K) has been allocated to FY 83.

The proposed Local Assistance bill for FY 83 allocates \$6,299K to NFTA. This amount plus the \$954K carryover from FY 82 has been reflected in FY 83. Beyond FY 83, the Gross Receipts tax is estimated to grow at 8.5% per year.

Mortgage tax revenues were received by the Authority before it acquired mass transit operations, and were used to offset loss operations and administrative costs.

The Authority still utilizes mortgage taxes for the same purpose and, accordingly, no mortgage tax revenue is reflected in the enclosed mass transit schedules.

V. ROCHESTER-GENESEE REGIONAL TRANSPORTATION AUTHORITY

(\$Millions)

Fiscal Year Ending March 31	1982	1983	1984	1985	1986
Operating Costs	21.3	22.6	24.5	26.6	28.9
Annual Increase	-	6.1%	8.5%	8.5%	8.5%
Revenues	9.4	10.5 ²	10.5	10.5	10.5
% of Budget	44%	46% ³	43%	39%	36%
Federal Aid	4.6	2.9	2.1	.7	-
% of Budget	22%	13%	9%	3%	-
NYS Taxes & Spec. Appro.	3.2	5.0 ¹	4.9	5.3	5.7
% of Budget	15%	22%	20%	20%	20%
NYS Operating Assistance	1.5	1.5	1.5	1.5	1.5
% of Budget	7%	7%	6%	6%	5%
Local Assistance	2.0	2.0	2.0	2.0	2.0
% of Budget	9%	9%	8%	7%	7%
Other Revenue	.6	.7	.5	.5	.6
% of Budget	3%	3%	2%	2%	2%
a. Current Fare	.60	.70	.70	.70	.70
Total Budget	21.3	22.6	24.5	26.6	28.9
Unfunded	-	-	3.0	6.1	8.6
% Unfunded	-	-	12%	23%	30%
Total %	100%	100%	100%	100%	100%
b. Fare Increase at 8.5% (Rounded off)	.60	.70 ²	.80	.90	1.00
Revenue Increase	-	1.4	1.6	1.5	1.5
Remaining Unfunded	-	-	1.4	4.6	7.1
c. Fare Level Required to Fund Full Deficit	.60	.70	.90	1.05	1.20

Exceptions to General Assumptions:

¹ Assumes one-time additional NYS contribution of \$.5 million² Fare increase effective 4/11/82³ RTS (urban system) recovery = 52%

VI. CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY

(\$Millions)

<u>Fiscal Year Ending March 31</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>
Operating Costs	12.4	13.4	14.4	15.6	17.0
Annual Increase	-	7.8%	8.0%	8.5%	8.5%
Revenues	6.0	5.9	5.9	5.9	5.9
% of Budget	48%	44%	41%	38%	35%
Federal Aid	2.7	1.9	.9	.2	-
% of Budget	22%	14%	6%	1%	-
NYS Taxes & Spec. Appro.	1.7	3.4	3.0	3.3	3.6
% of Budget	14%	25%	21%	21%	21%
NYS Operating Assistance	1.0	1.0	1.0	1.0	1.0
% of Budget	8%	8%	7%	7%	6%
Local Assistance	.9	.8	.8	.8	.8
% of Budget	7%	6%	6%	5%	5%
Other Revenue	-	-	-	-	-
% of Budget	-	-	-	-	-
a. Current Fare	.50	.50	.50	.50	.50
Total Budget	12.4	13.4	14.4	15.6	17.0
Unfunded	.1	.4	2.8	4.4	5.7
% Unfunded	1%	3%	19%	28%	33%
Total %	100%	100%	100%	100%	100%
b. Fare Increase at 8.5% (Rounded off)	.50	.50	.55	.60	.65
Revenue Increase	-	-	.5	1.1	1.7
Remaining Unfunded	.1	.4	2.3	3.3	4.0
c. Fare Level Required to Fund Full Deficit	.50	.50	.80	1.00	1.10

Exceptions to General Assumptions:

1. Net Authority mortgage tax funds are to be reserved and used solely for the local share of capital projects.
2. FY 83 State funding is based on the Governor's proposed budget. The projection contains 20% of the FY 82 GRT Funds since they were appropriated over a 15 month period. Additionally, a supplemental payment of \$230,000 from the 18b program was included for 1983.

These two special items were not continued into 1984 where the basic GRT Funding was increased by 8.5%. This lack of special funding results in a 10% decline in GRT Funding in FY 84.

VII. CAPITAL DISTRICT TRANSPORTATION AUTHORITY

(\$Millions)

Fiscal Year Ending March 31	1982	1983	1984	1985	1986
Operating Costs	14.9	16.1	17.5	19.0	20.6
Annual Increase	-	8.5%	8.5%	8.5%	8.5%
Revenues	6.6	6.6	6.6	6.6	6.6
% of Budget	44.0%	40.6%	37.4%	34.5%	31.8%
Federal Aid	3.4	2.9	1.6	.5	-
% of Budget	22.6%	17.9%	9.2%	2.9%	-
NYS Taxes & Spec. Appro.	2.3	3.5	3.4	3.7	4.0
% of Budget	15.5%	21.9%	19.4%	19.4%	19.4%
NYS Operating Assistance	1.2	1.2	1.2	1.2	1.2
% of Budget	8.1%	7.5%	6.9%	6.3%	5.8%
Local Assistance	.7	.7	.7	.7	.7
% of Budget	4.9%	4.5%	4.1%	3.8%	3.5%
Other Revenue(Mortgage Tax)	.7	.7	.7	.7	.7
% of Budget	4.9%	4.5%	4.1%	3.8%	3.5%
a. Current Fare	.50	.50	.50	.50	.50
Total Budget	14.9	16.1	17.5	19.0	20.6
Unfunded	-	.5	3.3	5.6	7.4
% Unfunded	-	3.1%	18.9%	29.3%	36.0%
Total %	100%	100%	100%	100%	100%
b. Fare Increase at 8.5% (Rounded off)	.50	.55	.60	.65	.70
Revenue Increase	-	.5	1.1	1.8	2.5
Remaining Unfunded	-	-	2.2	3.8	4.9
c. Fare Level Required to Fund Full Deficit	-	-	.71	.87	1.00

Exceptions to General Assumptions:

1. NYS "Other" for FY 83 includes one-time 1981 appropriation of \$280,000 and portion of 5th quarter of 1981 GRT appropriation.

VIII. WESTCHESTER COUNTY DEPARTMENT OF TRANSPORTATION

(\$Millions)

<u>Calendar Year</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>
Operating Costs	28.9	32.8	35.4	38.2	41.2
Annual Increase	-	13.4%	7.9%	7.9%	7.9%
Revenues	17.8	17.8	17.8	17.8	17.8
% of Budget	61%	54%	50%	47%	43%
Federal Aid	2.2	2.0	1.2	.4	-
% of Budget	8%	6%	4%	1%	-
NYS Taxes & Spec. Appro.	3.2	5.6	6.1	6.6	7.2
% of Budget	11%	17%	17%	17%	17%
NYS Operating Assistance	1.9	1.9	1.9	1.9	1.9
% of Budget	7%	6%	5%	5%	5%
Local Assistance	3.7	2.0	2.0	2.0	2.0
% of Budget	13%	6%	6%	5%	5%
Other Revenue	.1	.1	.1	.1	.1
% of Budget	-	-	-	-	-
a. Current Fare	.75	.75	.75	.75	.75
Total Budget	28.9	32.8	35.4	38.2	41.2
Unfunded	-	3.4	6.3	9.4	12.2
% Unfunded	-	11%	18%	25%	30%
Total %	100%	100%	100%	100%	100%
b. Fare Increase at 8.5% (Rounded off)	.75	.80	.90	1.00	1.10
Revenue Increase	-	1.1	3.6	5.9	8.3
Remaining Unfunded	-	2.3	2.7	3.5	3.9
c. Fare Level Required to Fund Full Deficit	.75	.90	1.05	1.15	1.30

Exceptions to General Assumptions:

1. 1983 Includes full year costs for Centralized Maintenance Facility (7/82 occupancy)
2. Centralized Maintenance Facility annual costs as per lease agreement - no inflation adjustment (1984-1986)
3. 1983 N.Y. State Gross Receipts Tax first full year of State formula for Unspecified Recipients.

IX. METROPOLITAN TRANSPORTATION AUTHORITY

(New York City Transit Authority)

(\$Millions)

<u>Fiscal Year Ending June 30</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>
Operating Costs	1764.0	1877.1	2036.7	2209.8	2397.6
% Increase	-	8.5%	8.5%	8.5%	8.5%
Debt Service		8.8	30.4	59.7	106.9
Total Budget	1764.0	1885.9	2067.1	2269.5	2504.5
Revenues- Current Fare	1036.6	1036.6	1036.6	1036.6	1036.6
% of Cost Covered	59%	55%	50%	46%	41%
Federal Aid	105.8	61.8	27.3	- 0 -	- 0 -
% of Budget	6%	3%	1%	0%	0%
NYS Taxes & Spec. Appro.	243.0	327.0	279.0	293.0	316.0
% of Budget	14%	17%	13%	13%	13%
NYS Budget Aid	106.7	106.7	106.7	106.7	106.7
% of Budget	6%	6%	5%	5%	4%
Local Aid	76.7	76.7	76.7	76.7	76.7
% of Budget	4%	4%	4%	3%	3%
TBTA Transfers	98.2	105.5	97.0	71.8	43.8
% of Budget	6%	6%	5%	3%	2%
Other	95.1	95.1	95.1	95.1	95.1
% of Budget	5%	5%	5%	4%	4%
a. Current Fare	.75	.75	.75	.75	.75
Total Budget	1764.0	1885.9	2067.1	2269.5	2504.5
Unfunded	-	76.5	318.7	589.6	829.6
% Unfunded	-	4%	15%	26%	33%
Total %	100%	100%	100%	100%	100%
b. Fare Increase at 8.5%					
Rounded	.75	.80	.90	.95	1.05
Revenue Increase	-	68.0	204.0	272.0	408.0
Remaining Unfunded	-	8.5	114.7	317.6	421.6
c. Fare Level Required to Fund Full Deficit	.75	.81	.98	1.18	1.36

IX. METROPOLITAN TRANSPORTATION AUTHORITY
(Staten Island Rapid Transit Operating Authority)

(\$ Thousands)

<u>Fiscal Year Ending June 30</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>
Operating Costs	10,771	11,687	12,680	13,758	14,927
Debt Service	-	-	-	-	-
Total Budget	10,771	11,687	12,680	13,758	14,927
Revenues	4,322	4,406	4,492	4,580	4,669
% of Budget	40%	38%	35%	33%	31%
Federal Aid	-	-	-	-	-
% of Budget	-	-	-	-	-
NYS Taxes	685	1,343	1,146	1,203	1,263
% of Budget	6%	11%	9%	9%	8%
NYS Operating Assistance	315	315	315	315	315
% of Budget	3%	3%	3%	2%	2%
NYC Operating Assistance	5,449	4,965	5,814	5,904	5,905
% of Budget	51%	42%	46%	43%	40%
Other Revenue	-	-	-	-	-
% of Budget	-	-	-	-	-
a. Current Fare	.75	.75	.75	.75	.75
Total Budget	10,771	11,687	12,680	13,758	14,927
Unfunded	-	658	913	1,756	2,775
% Unfunded	-	6%	7%	13%	19%
Total %	100%	100%	100%	100%	100%
b. Fare Increase at 8.5% (Rounded Off)	.75	.80	.90	.95	1.05
Revenue Increase	-	294	878	1,195	1,838
Remaining Unfunded	-	364	35	561	947
c. Fare Level Required to Fund Full Deficit	.75	.862	.906	1.044	1.206

IX. METROPOLITAN TRANSPORTATION AUTHORITY

(Commuter Railroads)

(\$Millions)

<u>Calendar Year</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>
Operating Costs	717.9	778.9	845.1	917.0	994.9
% Increase	-	8.5%	8.5%	8.5%	8.5%
Debt Service	10.5	30.0	50.1	56.6	56.6
Total Budget	728.4	808.9	895.2	973.6	1051.5
Revenues- Current Fares	384.9	384.9	384.9	384.9	384.9
% of Cost Covered	53%	48%	43%	40%	37%
Federal Aid	17.9	7.7	0	0	0
% of Budget	2%	1%	0%	0%	0%
NYS Tax & Spec. Appro.	102.4	72.2	77.9	84.0	88.3
% of Budget	14%	9%	9%	9%	8%
NYS Budget Aid	28.1	28.1	28.1	28.1	28.1
% of Budget	4%	3%	3%	3%	3%
Local Aid	20.0	20.0	20.0	20.0	20.0
% of Budget	3%	2%	2%	2%	2%
TBTA Transfers	46.2	77.5	73.8	53.5	37.5
% of Budget	6%	10%	8%	5%	4%
Other	97.6	86.7	92.2	98.1	104.4
% of Budget	13%	11%	10%	10%	10%
a. Current Revenue					
Total Budget	728.4	808.9	895.2	973.6	1051.5
Unfunded	31.8	131.8	218.3	305.0	388.3
% Unfunded	4%	16%	24%	31%	37%
Total %	100%	100%	100%	100%	100%
b. Revenue Increase at 8.5%	-	32.7	68.2	106.7	168.4
Remaining Unfunded	31.8	99.1	150.1	198.3	219.9
c. % Fare Increase Needed to Fund Deficit (compared to current)	8%	34%	57%	79%	101%

IX. METROPOLITAN TRANSPORTATION AUTHORITY

(Metropolitan Suburban Bus Authority.)

(\$ Millions)

<u>Calendar Year</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>
Operating Costs					
Total Budget	34.6	37.5	40.7	44.2	48.0
Fare Revenues	17.2	17.8	18.3	18.8	19.4
% of Budget	50%	47%	45%	43%	40%
Federal Aid	1.9	1.7	1.0	.4	-
% of Budget	5%	5%	2%	1%	-
NYS Taxes	4.9	4.6	4.9	5.3	5.6
% of Budget	14%	12%	12%	12%	12%
NYS Operating Assistance	1.5	1.5	1.5	1.5	1.5
% of Budget	4%	4%	4%	3%	3%
Other Revenues	.9	1.0	1.1	1.2	1.3
% of Budget	3%	3%	3%	3%	3%
a. Current Fare	.75	.75	.75	.75	.75
Total Budget	34.6	37.5	40.7	44.2	48.0
Unfunded	-	2.7	5.7	8.8	12.0
% Unfunded	-	7%	14%	20%	25%
Total %	100%	100%	100%	100%	100%
b. Fare Increase at 8.5% (Rounded Off)	.75	.80	.90	.95	1.05
Revenue Increase	-	1.2	3.8	5.2	8.0
Remaining Unfunded	-	1.5	1.9	3.6	4.0
c. Fare Level Required to Fund Full Deficit	.75	.86	.98	1.09	1.20

IX. METROPOLITAN TRANSPORTATION AUTHORITY

EXCEPTIONS TO GENERAL ASSUMPTIONS

State Tax Package - Published MTA estimates, with composite growth in the range of 5% per year, after a one-time reduction in State FY 84/85.

Other Assistance (including Local contributions, Station Maintenance, etc.) - consistent with published estimates, reflecting no growth in appropriations or mortgage tax, slight increase in station maintenance, city fiscal plan estimates for SIRTOA, etc.

TBTA Transfers - reflect recent fare increase, with future decline in revenue as debt service grows for TBTA and transportation purposes.

Reimbursable Programs (i.e. NYC Police costs, etc.) are not included.

Estimates for additional fare income needed do not reflect any incremental amounts to offset traffic loss.

PROFILES OF PARTICIPATING AGENCIES

NAME OF AGENCY: Niagara Frontier Transportation Authority

AREA SERVED: (counties or boroughs) Erie and Niagara Counties

POPULATION OF AREA SERVED: 1,242,826

PASSENGERS CARRIED (w/o transfers)

Annual: 40,048,000

Average Weekday: 156,300

BUS VEHICLE MILES

Annual: 10,250,000

Average Weekday: 36,600

PROFILES OF PARTICIPATING AGENCIES

NAME OF AGENCY: Rochester-Genesee Regional Transportation Authority

AREA SERVED: (counties or boroughs) Genesee, Livingston, Monroe,
& Wayne Counties

POPULATION OF AREA SERVED: 903,874 (1980 Census for 4 member
counties)

PASSENGERS CARRIED (w/o transfers)

	RTS	LL/RURAL	TOTAL
Annual:	25,831,363	248,250	26,079,613
Average Weekday:	91,195	923	92,118

BUS VEHICLE MILES

	RTS	LL/RURAL	TOTAL
Annual:	6,400,000	1,025,500	7,425,500
Average Weekday:	22,000	3,640	25,640

NAME OF AGENCY: Central New York Regional Transportation Authority

AREA SERVED: (counties or boroughs) Onondaga, Oswego & Cayuga
Counties

POPULATION OF AREA SERVED: 657,715

PASSENGERS CARRIED (w/o transfers)

Annual:	14,000,000
Average Weekday:	50,000

BUS VEHICLE MILES

Annual:	5,500,000
Average Weekday:	18,000

PROFILES OF PARTICIPATING AGENCIES

NAME OF AGENCY: Capital District Transportation Authority

AREA SERVED: (counties or boroughs) Albany, Schenectady, Saratoga
& Rensselaer, Counties

POPULATION OF AREA SERVED: 741,580 (1980 Census, 4-counties)

PASSENGERS CARRIED (w/o transfers)

Annual: 14,000,000

Average Weekday: 50,300

BUS VEHICLE MILES

Annual: 6,200,000

Average Weekday: 22,592

NAME OF AGENCY: Westchester County Department of Transportation

AREA SERVED: (counties or boroughs) Westchester County

POPULATION OF AREA SERVED: 870,000

PASSENGERS CARRIED (w/o transfers)

Annual: 24,666,000

Average Weekday: 93,000

BUS VEHICLE MILES

Annual: 8,957,645

Average Weekday: 34,000

21-22

Senator LUGAR. Thank you very much, Mr. Ravitch.

The committee has been joined by the distinguished Senator from Tennessee, Mr. Sasser. We welcome him. Do you have an opening comment or word of greeting to the panel this morning?

STATEMENT OF SENATOR SASSER

Senator SASSER. Thank you, Mr. Chairman.

First, let me say I'm delighted to be here this morning and delighted to see this distinguished panel of witnesses. I think these hearings we're having this morning are very, very important. I want to commend the chairman for convening these hearings. I think it's essential that we have a sound program of Federal mass transit assistance in the years ahead and I'm delighted to participate with you here this morning. I do have a statement, Mr. Chairman, which I'd like to have incorporated in toto in the record.

I might say that the mass transit systems in my native State of Tennessee are in desperate straits. In the city of Memphis, for example—which has a very large minority population and the bus system or mass transit system there is a primary source of transportation for many of them—because of the strict fiscal measures that they've had to take, all service has been eliminated on Sunday in the city of Memphis and all service has been eliminated after 6:15 in the evening in order that this system can avoid bankruptcy.

I had introduced legislation, Mr. Chairman, which would allow some transit systems to have access to funds which have been used in the past to purchase equipment, to use on a temporary basis as operating funds to keep them going during this very difficult period.

Having said that, Mr. Chairman, I will look forward to hearing the witnesses.

Senator LUGAR. The subcommittee is grateful that you're a part of us and that you're here this morning and we are grateful for good attendance by Senators for this very important hearing.

[Complete statement by Senator Sasser follows as though read.]

Senator SASSER. Mr. Chairman, I commend you for holding these important hearings today.

It is essential that we have a sound program of Federal mass transit assistance in the years ahead. As the Administrator for the Urban Mass Transit Administration stated at last Friday's Appropriations Committee hearing: "the economic vitality and viability of many, if not all, of our Nation's largest cities depend on mass transit." Therefore, I hope that the administration will join with the Congress in supporting a prudent but sensible mass transit assistance program during these troubled times.

Major Tennessee cities are now facing severe mass transit problems. The Memphis Metropolitan Area Transit Authority, for example, has eliminated all service on Sundays and all service after 6:15 p.m. so that the transit authority can avoid bankruptcy.

These service reductions work a severe hardship on 40,000 riders of Memphis mass transit going to and from work every day and who must depend on mass transit to get to Church services on Sunday.

Memphis transit users are paying a significant price for transportation. Fares in Memphis rose from 50 cents to 85 cents in less than 2 years, and service was cut 24.3 percent in 1981 alone.

Further cutbacks put into effect this past week will eliminate 27.4 percent of remaining service.

All these cutbacks have resulted in a 50 percent loss of service since January 1981. There are 20,000 fewer riders on the Memphis mass transit system, further reducing the transit system's fiscal stability.

Simply put, the Memphis transit system must depend on local, State, and Federal Governments for some form of operating assistance. It is difficult for hard-pressed State and local governments to help out, however, if the Federal Government is simply going to abandon operating assistance altogether.

The proposed mass transit cutbacks will be devastating for all Tennessee cities, not just Memphis.

According to the American Public Transit Association:

Chattanooga will have to cut service levels by 20 percent and raise transit fares to more than a dollar a ride.

Nashville will have to cut 47 percent of its service and raise fares to 75 cents in order to avoid bankruptcies.

Many other Tennessee cities will have to consider the imposition of local or regional gas taxes if some form of Federal operating assistance is not forthcoming.

The administration mistakenly contends that Federal operating assistance has generated unwarranted expectations about the level of service that local transit authorities can provide to their citizens.

Does this mean that Memphis should cut its service in half? Does this mean that rural Tennessee transit programs should close altogether?

Does this mean that the city of Knoxville which depends on Federal assistance for 29 percent of its operating transit budget should neglect the upkeep and maintenance of its bus system which is essential to the smooth operation of the upcoming World's Fair?

I think not.

We must forge a partnership among all levels of government for sound mass transit programs. Otherwise, mass transit systems will decline, energy efficient transportation will go by the boards, and urban employment opportunities may suffer.

I have introduced legislation, S. 2032, to help ease the urban mass transit crisis. It permits interstate transfer funds to be used for the operating costs of a local mass transit system if the local government so desires. Senator Baker is an original cosponsor of this measure. This demonstrates a strong bipartisan commitment to help solve urban mass transit problems.

The administration has thus far not endorsed this legislation. But maybe that is not surprising in light of their intention to end Federal mass transit operating assistance altogether.

Mr. Chairman, I believe that this committee will bring forward mass transit legislation to help keep our mass transit systems rolling, and I intend to be part of that effort. Thank you.

Senator LUGAR. Mr. Arnold, would you please proceed with your testimony.

STATEMENT OF DAN ARNOLD, CHAIRMAN, HOUSTON METROPOLITAN TRANSPORTATION AUTHORITY, HOUSTON, TEX.; ACCOMPANIED BY GOVERNOR JOHN CONNALLY

Mr. ARNOLD. Thank you, Mr. Chairman.

Like Mr. Ravitch, I also appreciate very much the opportunity to appear before you this morning.

Senator TOWER. Would you yield at that point? I think, Mr. Chairman, that the witnesses should understand that their statements can be submitted for the record in their entirety if they wish to summarize them.

Senator LUGAR. That's quite true. The statements will be made a part of the record in full and, likewise, Senator Sasser's opening statement. I appreciate your comment.

Mr. ARNOLD. Thank you. What I propose to do, of course, is just to summarize the written remarks which have already been submitted to you.

Senator LUGAR. Very good.

Mr. ARNOLD. I appreciate very much your permitting Governor Connally to be with me this morning. He's been very interested in mass transit since his days in the Governor's chair in Texas, as well as since he moved to Houston many years ago, and he's vitally concerned with our transit problems.

In summarizing my remarks this morning I propose to address basically three areas: one, the increasing importance of public transit in meeting the transportation needs in the new urban centers of the Southern and Western part of our country; two the efforts we have underway in Houston to build a modern public transportation system; and three the legislative recommendations which are before this committee.

Since the enactment of the Urban Mass Transportation Act in 1964, I believe there have been a number of significant developments in our country which in many ways have changed the face of the transit industry in our country. New bus and rail systems have emerged in areas previously dependent upon the automobile or small bus systems for transportation.

NEW RIDERSHIP DEMANDS

In Houston, for example, transit ridership in the last decade has increased some 63 percent, and I might comment that 13 percent of that increase was in the last year alone. So cities which 10 years ago were adequately served without sophisticated mass transit systems today are having extreme pressures exerted upon them to meet their new ridership demands.

For example, on our freeway systems in Houston between 1970 and 1980, we had a 22-percent increase in capacity, but we had a 106-percent increase in the usage of that system. Whereas, 10 years ago we might have what's commonly referred to as parking lots on the freeway an hour in the morning at most and perhaps an hour in the evening, the statistics compiled by the State Highway Department—and you don't really need those, all you have to do is get on the freeways—show that we now have parking lots maybe 12 or 14 hours a day. Those freeways are now carrying cars at

more than twice their design capacity. So you can imagine a few of the problems that we have in Houston.

Those of you who haven't been to Houston recently I'd invite to come down and just take a helicopter ride about 7:30 in the morning or 4:30 in the afternoon, and it will tell you quite a tale.

Senator TOWER. Instead of a helicopter ride, invite them to take a car ride.

Mr. ARNOLD. Well, a car ride wouldn't permit one to see much, Senator, just that parking lot surrounding you. I thought the helicopter ride would permit you to see the vast enormity of these parking lots that we have in Houston.

We recognize that the solutions to our transportation problems in cities like Houston will not be found without strong local support and we in Houston are prepared to and have been doing our share. Solutions will require a substantial capital investment in new transit equipment and facilities, and I firmly believe where economically justified, for new rapid rail systems.

A large share of the capital necessary for these projects must necessarily be generated in this day and time at the State and local level, but still, I do not believe that cities such as Houston, Los Angeles, Atlanta—some of the others that have been mentioned as growth areas—can do it all alone. I think that, by necessity, we must look to Washington and to the Federal Government to get our fair share of the available funds.

Just as the maintenance of adequate transit service may be essential to preserving economic health of many of the older cities in the Northeastern part of our country, such as New York from where Mr. Ravitch hails. I think that the ability to expand existing service to meet future ridership demand is equally critical to the economic well-being and vitality of cities such as Houston in the Southern and Western growth areas of our country.

I think that from a national perspective we cannot afford to ignore the needs of any of our transit systems.

Recognizing the need for restraint at the Federal level, Houston has taken a number of steps to accommodate our need for greater local planning and financial participation. For instance, in 1978 we created our metropolitan transit authority and imposed upon ourselves a penny sales tax—one of the few cities in the country doing that. That penny sales tax this year is yielding some \$160 million devoted solely to mass transit.

More recently, the five public agencies involved with mobility in Houston—the city of Houston, the county of Harris, the State highway department, the turnpike authority, and the MTA—went together and worked with our local Chamber of Commerce to develop a Regional Mobility Plan to set forth the improvements in mobility which will be necessary over the next 15 years to return us to the level of mobility that we had in 1975.

I think you have before you, or it will be distributed to you, an executive summary of that plan which I would ask to be incorporated into the record.

Senator LUGAR. It will be incorporated.

[Document follows:]

EVERY DAY YOU SIT IN HOUSTON'S TRAFFIC

Houston's traffic costs you time — probably an hour a day. It costs you money, too. Recent figures, which take into account the value of time, gasoline, and insurance, estimate that Houstonians pay a "traffic congestion tax" of almost \$800 apiece each year. That amounts to about \$1.9 billion a year total.

You know the traffic is bad and getting worse. So why isn't anybody doing anything about it? Somebody is.

The Transportation Committee of the Houston Chamber of Commerce has announced a 15-year plan to restore mobility in Houston to at least the level which existed in 1975.

The \$16.2 billion Regional Mobility Plan (RMP) outlines a system of street, freeway, and mass-transit projects that would work together to reduce traffic congestion.

The transportation professionals who drafted the plan were drawn from the City of Houston, Harris County, the Texas Department of Highways and Public Transportation, the Texas Turnpike Authority, the Metropolitan Transit Authority (MTA), and the Chamber of Commerce Transportation Committee.

NEED FOR A PLAN

The RMP planning group compiled a set of figures to show just how bad Houston traffic really is.

The group found that the average number of trucks and cars using a lane of freeway each day increased by more than 100 percent from 1970 to 1980. In fact, Houston freeways currently carry twice the volume of the standard level for acceptable use (See Chart A).

When traffic levels increase, the average speed of travel drops. Average speed on Houston freeways during the afternoon peak period fell from 36.6 mph in 1969 to 24.4 mph in 1979.

Not only are travel speeds decreasing, but morning and afternoon "rush hours" are lasting longer and longer. The congestion period increased from an average of less than three hours in 1970 to 7-1/2 hours in 1981 (See Chart B). In some areas, such as the Southwest Freeway between the West Loop and Chimney Rock Drive, the congestion lasts for 12-14 hours a day (See Chart C).

As previously mentioned, these longer traffic tie-ups cost Houstonians about \$1.9 billion a year.

Bad as traffic congestion is now, the outlook is even worse. Consider that the population of the Houston area is expected to grow by at least one million people over the next 15 years.

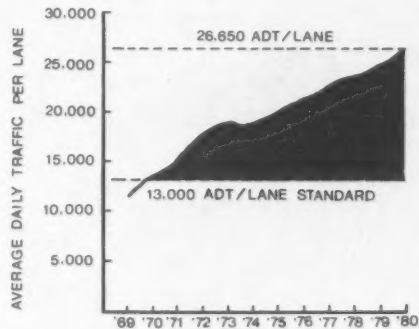
WHAT HAS BEEN DONE

Houstonians have been working hard on traffic problems and have come up with many programs to alleviate congestion — programs short of a comprehensive traffic improvement plan such as the RMP.

For example, spreading the peak traffic hours has been taken about as far as it can go in Houston. In most cities, where traffic congestion lasts for an hour or so in the morning and afternoon, peak traffic loads can be reduced through staggered work hours or the so-called "flex time." However, in Houston, staggered and flexible work-hour plans are used widely already and area freeways are still congested for up to 14 hours at a time.

CHART A

HOW TRAFFIC LEVELS HAVE INCREASED
(AVERAGE DAILY TRAFFIC PER LANE
AT SELECTED FREEWAY LOCATIONS*)



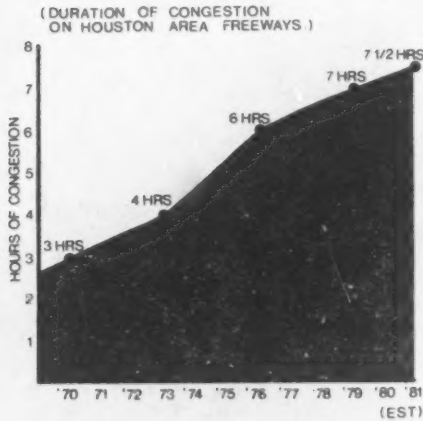
* GRAPH IS AVERAGE OF DATA FROM THE FOLLOWING FREEWAY CORRIDORS

EASTEX FREEWAY AT PARKER
NORTH FREEWAY AT PARKER
KATY FREEWAY AT GESSNER
SOUTHWEST FREEWAY AT WESTPARK
GULF FREEWAY AT DOWLING
WEST LOOP AT BUFFALO BAYOU

GETTING HOUSTON MOVING AGAIN

CHART B

HOW TRAFFIC CONGESTION HAS GROWN



Traffic congestion also can be reduced by increasing the number of people in each vehicle through use of buses, vanpools, and carpools. Houston already is in the vanpooling capital of the world with more than 2,200 vans in use every day. The city and county, the Metropolitan Transit Authority (MTA), the State Department of Highways and the Chamber of Commerce all encourage the forming of carpools.

In the last three years, the MTA has opened 14 park-and-ride lots with express bus service from suburban areas to downtown and other major employment centers. Within one month of opening, nearly all such service offered by MTA was operating at or near capacity.

In addition, the city has used many traffic management techniques to keep the cars moving — one-way streets, lanes for special vehicles, turn lanes, and traffic lights set in sequence.

One of the most successful of these methods has been the "contraflow" lane on the North Freeway. During peak periods, specific vehicles are allowed to use one lane generally reserved for traffic headed in the opposite direction. In a little more than two years, the contraflow lane has increased the number of people traveling the North Freeway in the "peak-use" direction by 50 percent.

All these techniques have helped increase mobility around Houston but many of them have been taken nearly to their limits. The Regional

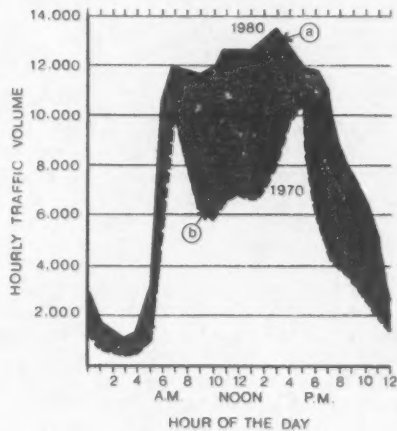
Mobility Plan is set up to take these good ideas and build on them, adding new projects and integrating the whole transportation program.

In developing the 15-year plan, the RMP group set out to:

- Make the most of the transportation facilities already in place.
- Use all types of transportation projects as effectively as possible.
- Avoid competition between different means of transportation.
- Encourage the use of public transportation, vans, and carpools.
- Look at funding limits and other possible constraints on construction such as material and labor and to present the least costly system that would reduce the traffic congestion.

CHART C

ONE EXAMPLE OF EXTENT OF THE PROBLEM
(TYPICAL WEEKDAY HOURLY TRAFFIC VOLUME AT THE SOUTHWEST FREEWAY & RICE AVE.)



- (a) CONGESTION FROM 6:30 A.M. TO 6:30 P.M. NO LONGER RELATED ONLY TO GETTING TO & FROM WORK.
- (b) 1970 TYPICAL COMMUTER PATTERN — CONGESTION EARLY MORNING & LATE AFTERNOON

FEATURES OF THE PLAN

The planning group decided that 15 years was the minimum time in which the plan could be put into effect. With their objectives in mind, the group devised a plan calling for a total of:

- 170 miles of additional capacity for existing freeways, for express automobile use and for buses, vanpools, and carpools;
- 300 miles of new freeways;
- 30 miles of high capacity transitways;
- 1,400 miles of new streets;
- new grade separations (running a street over a cross street or railroad track to eliminate an intersection) and freeway interchanges; and
- several thousand new buses, plus maintenance and park-and-ride facilities.

COST OF THE PLAN

Implementing the plan is estimated to cost about \$16.2 billion (in 1981 dollars). The first phase of improvements, those needed to meet current demands, would amount to \$9.8 billion.

Included in the first part of the plan are the construction of 150 miles of freeways (including tollways), 20 miles of high capacity transitways, 800 miles of new major streets and roads, and widening existing freeways. Provisions are made also for 16 grade separations and five three-level freeway interchanges, along with park-and-ride lots and buses.

The rest of the RMP, needed to complete the system, pay for major maintenance, and expand to serve new growth (at least one million more people), will cost another \$6.4 billion.

SOURCES OF FUNDING

The RMP represents the scope of the traffic problem and its solutions. It also presents a need for increased commitments from existing funding sources and the need for new sources of funding if Houston is to solve its traffic problems.

Existing funding sources are expected to supply only \$6.9 billion of the estimated \$16.2 billion cost of the projects. The plan lists a number of funding options — without recommending any of them specifically — for adequately closing the \$9.3 billion funding gap:

- Increase Harris County's percentage of state highway funds. To achieve the goals of the RMP, Harris County would need to receive at least 30 percent of state highway funds available for highway construction instead of the projected 25 percent.
- Increase transit revenue. The MTA Board has a policy goal of generating from fares 40-50 percent of funds necessary to operate the system. Increasing the fares could raise the actual percentage of coverage from the current 27 percent.
- MTA Funding Sources. In order to have sufficient funds to implement major transitway projects the MTA should examine a broad range of alternative funding sources including but not limited to: revenue bonds, special assessment districts, public/private joint development, federal/state assistance.
- Re-establish the State Public Transportation Fund which was eliminated in 1981. Houston's projected need for transportation funds could justify the state fund at a level of at least \$15 million a year.
- Change Texas Motor Fuel Tax to percentage and increase. At five cents a gallon, the tax is the lowest in the country, 4.8 cents below the national average. A nine-percent tax at the wholesale level would yield approximately \$288 million additional annual revenue for the state highway program and \$96 million for the state school program in line with the ratio now prescribed by the state constitution.

- Apply the sales tax to motor fuel. Applying the four percent sales tax to the wholesale price of motor fuel could bring in an extra \$384 million a year to the state highway fund. Local sales taxes could also be applied within taxing districts.
- Dedicate the four percent state motor vehicle sales tax. If this user fee were dedicated to the state highway fund, it would bring in an additional \$438 million a year.
- Increase motor vehicle registration fees. If the current registration fee were doubled, and the distribution of funds to the counties were kept in the current proportion, state highway fund revenues would be increased by \$274 million a year.
- Increase local capital improvement programs. Based on the RMP estimate of needs, the capital committed by city and county to local street and bridge construction should be increased by about 73 percent.
- Institute user tolls. Revenue from a tollway is used to retire bonds sold to finance its construction and to operate and maintain the roadway.
- Create a Harris County User Fee Improvement Fund. Under state law, a Harris County Turnpike Authority could be created to implement user fees in addition to what the Texas Turnpike Authority might fund.
- Federal government participation is possible both in improving the interstate portions of the freeways and in the major public transportation projects of the RMP.

If each of the funding sources were tapped and user fees were implemented, it is estimated that the entire Regional Mobility Plan could be financed during the 15-year period.

The funding requirements seem high. This investment in a transportation system will reduce the cost of congestion — the \$1.9 billion area residents pay each year for increased insurance, fuel, and time.

WHAT CAN YOU DO?

The Regional Mobility Plan points clearly to this area's physical and financial transportation needs. It describes the minimum investment our community and the state must make to improve our mobility. The task of closing the gap between what we invest now and what we need to invest will not be easy, but it can be done.

If you want to help solve the Houston area's traffic problems, act now. Contact your city, county, and state officials and tell them you support the Regional Mobility Plan.

Do it today.

Mr. ARNOLD. Thank you, Mr. Chairman.

The improvements depicted in the Plan in 1981 dollars will cost some \$16.2 billion according to the estimates which we have and some \$4 billion of that will be solely for mass transit improvements such as rapid rail, HOV lanes on freeways, new buses, bus maintenance facilities, and that type of thing. Also included, of course, are new freeways, arterial streets and other projects not directly related to mass transit.

We can do a good bit at the local level, but we feel that it is imperative—we can't do it all—that Houston receive an equitable share of the Federal mass transit funds which will be available in the future if we are to be able to construct these improvements over the next 15 years.

I'd like to spend a couple of minutes in conclusion commenting on some of the legislative proposals which are before this committee.

LEGISLATIVE PROPOSALS

I think that any legislation which comes out of the Congress must take into account the different characteristics and needs of systems in different regions of the country and in different stages of development.

In this regard, I think there are four basic points on which I would like to comment.

I think it is essential for growth cities such as Houston that there be a retention of a viable discretionary capital program. As Mr. Ravitch pointed out, there's about a 25 percent discretionary program in the bill introduced by Senator D'Amato. We think that this is an appropriate level of discretionary funds and would give the Secretary of Transportation the necessary discretion to approve new capital projects.

It's our view that growth cities such as Houston just cannot be asked to bear a disproportionate share of the burden of funding reductions.

We also strongly believe in the increased local flexibility which some of these proposals put before the committee. For instance, the increased reliance on local self-certification of compliance of Federal administrative requirements would greatly enhance administrative efficiency without, we believe, affecting the integrity of programs. When you have that kind of acceleration of the process you not only save a lot of dollars, but it is possible to stretch the available local dollars as well as the Federal dollars a lot further.

At the same time, we feel that we must strongly oppose restrictions proposed by the administration on the use of Federal funds for the construction of new rail systems. That just doesn't make good sense insofar as growth cities such as Houston are concerned. We think that the choice of rail technology should not be foreclosed by the Federal Government but basically should be left at the local decision level.

We also think that there needs to be a recognition of growth needs in the block grant formula and that a balance should be struck between the needs of established systems to maintain exist-

ing service and the needs of the newer systems to expand service to meet our new ridership demands.

We would propose that equal formula rates be assigned to population and service based factors in the basic block grant program. Though imperfect—and I think any formula is going to be imperfect—we believe that population would provide a rough measure for potential as well as existing service.

We also believe that there should be incentives provided for local initiative. Houston and other cities which have sought to help themselves, we think, should be rewarded rather than penalized for it. If the local match shares were increased from 20 percent to the 30- or 40-percent level, it would encourage greater local attention to project costs and would also give the Federal Government the opportunity to spread its dollars over more projects.

In principle, we think that there should be a strong Federal interest in rewarding those systems which demonstrate the greatest local commitment to self-help.

Mr. Chairman, as I said initially, I do appreciate very much the opportunity to appear before this distinguished committee today to discuss these transit needs. We believe that Houston has a meritorious case. We've always been a "can-do" city and we think we have demonstrated that through your dedicated penny sales tax for mass transit and our regional mobility plan. We would appreciate the assistance of the committee in this regard, and at the appropriate time I'd be pleased to answer any questions which any of you might have. Thank you very much.

[Complete statement follows:]

Statement of
Daniel C. Arnold,
Chairman Metropolitan Transit
Authority of Harris County

Mr. Chairman, my name is Daniel C. Arnold and I am Chairman of the Metropolitan Transit Authority of Harris County, Texas which serves the City of Houston and much of the surrounding metropolitan area. I had hoped to be accompanied this morning by Louie Welch, the President of the Houston Chamber of Commerce. Unfortunately, commitments in Houston have made this impossible. I would ask permission, however, that Mr. Welch be permitted to submit a written statement for the Committee record.

I appreciate the opportunity to appear before you today to discuss the public transit needs of Houston and other growth cities in the context of various proposals to restructure current federal mass transit assistance programs. In my statement I will address three essential points: 1) the increasing importance of public transit in meeting the transportation needs in the new urban centers of the South and West; 2) efforts currently underway in Houston to build a modern public transit system; and 3) legislative recommendations based on the present and anticipated needs of growth cities such as Houston.

Transit Needs of Growth Areas

Since the enactment of the Urban Mass Transportation Act in 1964, a number of significant developments have changed the face of public transit in this country. In that year the vast majority of all public transit trips originated in just a few large cities in the Northeast and Midwest. Rapid rail service was limited

to just six cities. Most of the rest of the Nation was served by bus systems, many of which were owned and operated by private companies. The principal federal focus at that time was on the completion of the interstate highway system which had already spurred dramatic improvements in mobility in many U.S. cities during the previous decade.

Today, most of the old private transit companies have been replaced by local public transit authorities. Most of the essential elements of the interstate system are now complete. Also, there has been renewed interest in mass transit following the severe oil price shocks of the 1970s, and transit has once again begun to be recognized as an important national asset.

During this period, however, the character of mass transit in the United States has changed dramatically as new bus and rail systems have emerged in areas previously dependent on the private automobile particularly in the growing cities of the South and West. Although overall transit ridership on a national basis has increased only slightly since 1964, significant shifts have occurred on a regional basis. In Houston, for example, transit ridership was up almost 63 percent between 1971 and 1981.

With the tremendous migration of businesses and families to the South and West, cities which ten years ago were adequately served by relatively small bus systems began to face increasing pressures to meet new rider demands. For example, between 1970 and 1980, the population of the urbanized area surrounding Houston

increased by over 43 percent. Other cities, including San Diego, Atlanta and Miami experienced increases of more than 30 percent. As these cities grew, and traffic began to outstrip the capacity of local roads and freeways, the availability of reliable public transit services became an increasingly important local issue.

A few statistics reflecting Houston's experience might help to put this into perspective. Between 1970 and 1980, the capacity of Houston's freeways increased by approximately 22 percent. With the influx of hundreds of thousands of new residents during this same period, however, freeway traffic increased by 106 percent. As a result, traffic congestion, which in 1968 was largely a rush hour phenomenon lasting approximately 2 hours each day on Houston's major freeways and roads, now averages approximately 7 1/2 hours daily on a city-wide basis with peaks of 12-14 hours per day along certain heavily used corridors. This is reflected in daily traffic loads on many local freeways which are now more than double federal design and safety specifications as well as in traffic delays which can result in commuting times of 2 hours or longer to the central business district.

These problems affect the daily lives of virtually all of Houston's citizens. In economic terms, the costs of this level of congestion have become staggering--approximately \$1.9 billion annually according to recent estimates by the Houston Chamber of Commerce based on increased fuel consumption, lost work time and other factors. The social and psychological costs

have not been measured, but must be at least as great. Though Houston's traffic problems may be more severe than those facing most other cities, they unfortunately are not unique.

Over the long run, we recognize that solutions to the transportation problems of cities like Houston will not be found without strong local public support. From a practical standpoint, physical limitations on the construction of new freeway lanes as well as increasing awareness of and concern for environmental and other social factors make it clear that significant progress will require increased reliance on public transportation. Substantial capital investments will be required in new transit equipment and facilities and, where economically justified, new rapid rail systems. To meet these needs, the strong federal-local partnership which has worked so well since 1964 must be maintained. We recognize that a large share of the funding for needed improvements will have to be generated at the State and local level. Still, we cannot afford to do it entirely on our own. Accordingly, Houston and other growth cities will continue to look to Washington for a fair share of available federal funding.

This is not to suggest that the needs of other cities can be ignored. For example, we recognize the need for modernizing existing transit facilities in cities such as New York and Philadelphia where large segments of the population are currently dependent on transit service for commuting and other purposes. We also support continued assistance to small urban and rural transit systems

with needs that are primarily bus oriented. The important point is that the legitimate needs of all systems must be understood and recognized.

The dramatic shifts in population and transit ridership which occurred during the 1970s and which are expected to continue in the 1980s must be reckoned with. Mass transit has become a truly national issue as cities such as Houston, Dallas, Los Angeles and Atlanta have grown to become important centers of national and international commerce. To an increasing extent, the future of our Nation will depend on the ability of these cities to continue to grow and prosper. In this regard, I should emphasize that the types of problems which could be faced by cities such as Philadelphia, Boston and Cleveland in the future if existing transit facilities are allowed to continue to deteriorate are precisely the same problems that cities such as Houston face today without reasonable federal help.

Just as maintenance of adequate transit service may be essential to preserving the economic health of many older cities, the ability to expand existing service to meet future rider demand will be critical to the economic well-being of growth areas. From a national perspective, we cannot afford to ignore the needs of any of our transit systems.

Houston's Commitment to Improved Mass Transit

It seems clear that economic realities will dictate a more careful review of federal spending programs over the next several years. While I believe that aid to mass transit should be afforded a priority over many other domestic spending programs, I am also aware of the need to economize where possible in all areas. For this reason, I believe that the role of State and local governments in helping to finance improved mass transit services will grow over the next decade. We in Houston recognize this and have already taken a number of significant steps to accommodate the need for greater local planning and financial participation, including the approval by voter referendum in 1978 of a special one-cent sales tax within Harris County earmarked exclusively for public transit improvements.

More recently, the Houston Chamber of Commerce, working cooperatively with the MTA and other State and local transportation authorities, proposed a comprehensive Regional Mobility Plan for the Houston area. Developed through the joint efforts of transportation and finance professionals with the strong backing and support of local business and political leaders, the plan incorporates an integrated problem-solving approach to improving transportation in the Houston area over the next 15 years. The primary focus of the Plan is to restore the relative mobility of Houston's citizens to the levels enjoyed in 1975.

This would be achieved through a comprehensive long range program including:

- construction of new freeways and arterial streets, most of which will be designed to include special facilities for buses, vanpools and carpools;
- construction of new high capacity transitways along carefully selected high density corridors; and
- purchase of 2,000 new buses and construction of additional maintenance facilities and park and ride lots.

This integration of alternative transportation modes is, in my view, one of the principle strengths of the Plan. Transit planning in Houston must be guided by the geography and social climate of Houston itself. Solutions which are appropriate in New York or Washington, D.C. may not be appropriate in Houston. The Regional Mobility Plan recognizes this fact and has been designed to meet realistic transportation goals with a strong emphasis on cost-effectiveness. While not intended as a panacea, the Plan provides a responsible and systematic multi-year program for meeting the specific transportation needs of the Houston metropolitan area. Increased reliance on public mass transit represents an integral part of the Plan.

Overall, the transportation improvements called for in the Plan will require new capital investments of more than \$16 billion through 1995. Mass transit expenditures are expected to account for more than 25 percent of this total. Existing sources of financing,

including the proceeds of the current one-cent sales tax are expected to yield approximately \$7 billion over this period, leaving a gap of more than \$9 billion. Clearly, significant new sources of funding for mass transit improvements will be required to help close this gap. While we are committed to exploring every reasonable avenue for financial assistance at the State and local level--the MTA is currently relying entirely on local funds for preliminary engineering of a fixed rail system along the heavily-traveled Southwest/Westpark corridor under an Urban Mass Transportation Administration Letter of No Prejudice issued last Fall--it will be imperative that Houston receive an equitable share of federal mass transit funds which may be made available in the future. Ultimately, the participation of all levels of government, Federal, State and local, will be required if the full benefits of the proposed improvements are to be realized by the citizens of Houston.

Legislative Recommendations

Federal aid to mass transit during the 1970s provided an impetus for revitalizing many older systems and for constructing several new ones. Over the next several years, however, the need for restraint in all federal spending programs, including mass transit, will require that the responsibility for providing mass transit funds rest more heavily at the State and local level. Through the cooperative efforts of government and the private sector in developing the Houston area Regional Mobility

Plan, we in Houston have demonstrated our resolve to accept this responsibility. We see other cities such as Dallas, Atlanta, Los Angeles and San Jose moving in a similar positive direction.

Mr. Chairman, we believe that legislative proposals for restructuring current federal transit programs to meet these changing circumstances must address the needs of all systems in the context of a regionally balanced, national program. Individual systems must be afforded the flexibility to take maximum advantage of available funds to meet their particular transit needs. The legislation must take into account the fact that transit systems across the nation have significantly different characteristics and that formulas or policies which may provide an appropriate measure of assistance to one type of system may be wholly inadequate or inefficient with respect to other systems in different regions or in different stages of development. We urge this Committee to build upon its fine past record to fashion a bill which will provide a basis for addressing the most critical needs of the nation's transit industry as a whole over the next decade.

In general, we believe that the legislative proposal developed by the transit systems themselves through the leadership of the American Public Transit Association provides a sound basis for an effective and equitable national transit program. We are encouraged that a number of the concepts underlying the industry proposal are being considered seriously by this Committee. In this regard, we would place particular emphasis on four basic points.

1. Retention of a Viable Discretionary Capital Program.

This point is absolutely fundamental to systems such as Houston's which must undertake substantial capital investments in new rolling stock and other facilities over the next several years to modernize and to provide efficient and reliable transit service to meet increasing rider demands. While we recognize and support the objectives of block grant proposals to provide greater financial certainty and increased local flexibility, block grants alone are simply not responsive to the large up-front capital needs of expanding systems. Growth cities should not be asked to bear a disproportionate share of the burden of funding reductions. As I have tried to stress, Houston's needs to expand current service are no less pressing than the needs of other, older cities to prevent further deterioration of service.

Sufficient flexibility must be retained at the federal level to address the needs of growth cities and to allow such systems access to a reasonable level of assistance. In this regard, we strongly endorse the retention of a minimum of 25 percent of total program funding within the current Section 3 discretionary capital grant program. These funds should continue to be available for investments in economically justified new rail projects as well as other extraordinary capital expenses including major bus purchases and the construction of modern maintenance facilities.

2. Increased Local Flexibility. We strongly support the objective of increasing administrative flexibility at the local level. In particular, we believe many of the Administration's proposals to streamline existing federal administrative requirements deserve careful consideration by the Committee. For example, we believe that increased reliance on local self-certification of compliance with various accounting, environmental and other requirements will greatly enhance administrative efficiency at both the federal and local levels without significantly affecting program integrity.

At the same time, we must strongly oppose restrictions proposed by the Administration on the use of federal funds for the construction of new rail systems. At the very least, this is seriously inconsistent with the basic purpose of block grant legislation to return decision making to the local level. An economic study of proposed new rail systems in the United States recently published by the New York based Regional Plan Association concluded that construction of new rail systems could be justified from an economic standpoint in Houston as well as in several other cities.*/ So long as a particular project can be justified

*/ Urban Rail in America: An Exploration of Criteria for Fixed Guideway Transit, Indiana University Press, 1982.

economically and adequate limits on the extent of federal financial commitments can be maintained (e.g. through increased local matching share requirements or other means), the choice of rail technology should not arbitrarily be foreclosed by the federal government.

3. Recognition of Growth Needs in a Block Grant Formula.

For the full benefits of a block grant program to be realized by growing systems such as Houston's, careful consideration must be given to the factors used to allocate available funds. Formulas based on measurements of existing transit service either in the form of revenue miles or operating costs fail to address the capital requirements of meeting new service needs. Ideally, a block grant formula should strike a balance between the needs of established systems to maintain existing service levels and the needs of newer systems to expand service to meet new ridership demands.

We therefore propose that equal formula weights be assigned to population and service-based factors in the basic block grant program. Though imperfect, population provides a rough measure of potential as well as existing service. Comparable recognition of the needs of rail systems should be incorporated in the rail block grant formula. We believe that the equitable weighting of block grant formula factors is particularly important in

light of proposed reductions in the amount of funds authorized for Section 3 discretionary capital grants which have in the past been used to support the expansion of new systems.

4. Incentives for Local Initiative. A series of proposals have been advanced to provide incentives for greater participation in transit financing by State and local governments. These include proposals to increase the local matching share requirements for federal grants as well as to include special "efficiency" factors in the proposed block grant formula. In particular, we believe that increasing the required local match for Section 3 capital grants will help stretch out available federal funds among additional projects and thereby stimulate a greater return for each federal dollar spent. It will also encourage greater local attention to cost factors in the project design process. With respect to proposed "efficiency" factors, we believe that care must be taken to avoid a disproportionate reliance on mere passenger volume. The efforts of smaller and expanding systems must also be recognized. We also recommend that consideration be given to additional incentive factors designed to measure the level of local financial effort, particularly investments in capital equipment and facilities. In principle, there is a strong federal interest in rewarding those systems which demonstrate the greatest local commitment to self-help.

Conclusion

Mr. Chairman, I appreciate very much the opportunity to appear today before this distinguished Committee to discuss the transit needs of Houston and other growth cities. I know that the Committee is committed to producing a bill which will continue to support a healthy and balanced national transit program. I would like to offer my assistance to the Committee in this regard and would be pleased to respond to any questions that you or other members of the Committee might have at this time.

Senator LUGAR. Thank you very much, Mr. Arnold.
Mr. Millar.

STATEMENT OF WILLIAM MILLAR, ON BEHALF OF JAMES R. MALONEY, EXECUTIVE DIRECTOR, PORT AUTHORITY OF ALLEGHENY COUNTY, PITTSBURGH, PA.

Mr. MILLAR. Thank you, Mr. Chairman. I am here on behalf of and at the request of Mr. James R. Maloney, executive director of the Port Authority of Allegheny County. Were it not for an unexpected stay in one of our local hospitals, Mr. Maloney would have been here himself this morning and he does send his greetings.

We're particularly pleased to appear before a committee that has our hometown Senator serving ably on it and we are very pleased that Senator Heinz was willing to come to the Port Authority Transit properties on Monday and visit our main shops and give us the opportunity to show him some of our needs in Pittsburgh.

Also, Mr. Chairman, I'd like to thank you for sponsoring these hearings because I really believe this type of forum is what is needed to get the message out to the public as well as to those of you who have difficult decisions to make here in Washington as to the needs and the opportunities that public transportation presents to the country.

I think I ought to start by maybe describing a little bit about the Port Authority. Frankly, we have nothing to do with ports other than to promote them. We are the principal mass transit operator in the Pittsburgh urbanized area. We operate about 1,000 buses, about 100 streetcars. We have something called an inclined plane and we have a commuter rail line and we sponsor a very successful service for elderly and handicapped persons utilizing the facilities and equipments provided by local private taxi companies and social agencies.

[Complete statement follows:]

STATEMENT OF JAMES R. MALONEY, EXECUTIVE DIRECTOR, PORT AUTHORITY OF ALLEGHENY COUNTY, PRESENTED BY WILLIAM W. MILLAR, DIRECTOR OF ADMINISTRATION

Mr. Chairman, it is indeed a pleasure and honor for me to appear this morning before this committee. My name is William Millar and I am speaking on behalf of and at the request of James R. Maloney, executive director of the Port Authority of Allegheny County, based in Pittsburgh, Pennsylvania.

Before starting, on behalf of the Port Authority, I want to commend and thank you for holding these hearings. It is through open forums such as this one that we can best hope to broaden public understanding of the critical need for continuing Federal funding aid to public transportation at a high level.

The Port Authority—which local residents know simply as PAT—owns and operates some 1,000 buses, 92 streetcars, two inclined planes and one commuter train to serve a population of nearly two million persons over 730 square miles of Allegheny County and parts of adjoining counties. In addition, PAT contracts with taxi companies and social agencies to provide specialized transit service for elderly and handicapped persons—known as the access system. On a typical day, some 340,000 transit riders use the PAT system to travel to and from jobs, to shop and attend to educational, medical and other needs.

Our current fares—which had to be raised twice in 1980 because of severe economic pressures—range from a 75-cent base up to \$2.65 for the most distant suburban zone. This fare structure enables us to recover nearly 50 percent of our operating costs from the farebox, which last year produced \$57 million of a \$113 million operating budget. An additional \$30 million came from the Commonwealth of Pennsylvania. Federal section 5 operating assistance grants accounted for \$16 million; and Allegheny County picked up the remaining \$11 million.

Section 5 operating assistance grants cover about 14 percent of our total operating budget and approximately 28 percent of the operating deficit.

Since its abrupt start last December, the phase-out of Federal operating aid has had a severe impact on Port Authority operations. To absorb the initial \$2 million cutback, we have been compelled to reduce service, trim administrative staff by 10 percent, lay off 25 bus operators, and order wage freezes for all non-union employees—while asking that all union employees forego cost-of-living and contractual wage raises.

As is true of all Pennsylvania transit agencies, the port authority does not have the benefit of a dedicated transit taxing source. Therefore, to make ends meet we must seek more and more economies both in operations and administration; we must cut service and/or raise fares; and we must be more aggressive in our ongoing quest for increased operating subsidies.

We agree that mass transit, along with other programs dependent on Federal subsidies, must absorb a share of the Government's budget cutbacks. But we must point out that public transit has already been called upon to give more than its fair share to the anti-inflation campaign. It is to the interest and benefit of the Federal Government to protect its investment of the past two decades in public transit. That investment cannot be insured and protected against deterioration and uselessness by eliminating Federal operating funds. It does not make good economic nor business sense to spend billions of dollars on new systems, new buses and other capital improvements—and then not provide the means to operate and make most efficient use of those improvements.

Public transit in Allegheny County has an urgent and expanding need for operating aid. But I want to emphasize that we also have great need for continuing capital funding assistance.

At present, as you may know, our existing trolley system is being converted into a modern light rail transit system. This half-billion dollar capital improvement features total reconstruction of the roadbed and trackage, new and rehabilitated vehicles, new maintenance and power distribution facilities, and a short segment of downtown subway. The 10.5-mile system is scheduled to be ready for service by late 1984; but Federal funding for the project is already lagging behind schedule and if the funding schedule is not maintained, construction of this vital transportation project may have to be extended into the second half of the 1980's.

We do not need a crystal ball to tell us that if that happens the project costs will escalate substantially—at a time when the public taxpayer is demanding more cost-effectiveness from the Government projects financed by tax dollars. The cost of our additional capital needs—now estimated at \$1.8 billion through 1991—obviously would also follow the same escalation pattern if Federal transit aid is not increased.

Downtown Pittsburgh currently is undergoing overall revitalization—generally referred to as Renaissance II. Over five million square feet of private office space is under construction and will be on the market by 1984. One major reason for all this downtown growth is the accessibility of transit service provided to the central business district. Private enterprise is counting heavily on completion on time of the light rail transit program and related improvements. In fact, corporate decisions to proceed with this intensive downtown development were contingent, in part, on plans for downtown transit improvements, principally a subway to move people in and out of our compact business district on a fast and reliable basis.

Furthermore, our new light rail transit system is designed to tie directly into and supplement new office, hotel and other commercial development. For example, air rights above the main downtown station are being used in the construction of a 12-acre complex known as the steel plaza, which includes the 54-story Dravo Tower now rising rapidly and a future hotel. This kind of economic growth—so desperately needed in this time of economic decline and high unemployment in the Pittsburgh area—cannot possibly be supported by an appropriate level of transit service if Federal operating subsidies are eliminated, or even reduced.

In this connection, I would turn my attention to two transit bills recently introduced in the Senate which embody the concept of block grants for distributing significant amounts of Federal transit funds. One is the administration proposal, S. 2367. It is our understanding that this bill would reduce the overall Federal transit funding level to \$2.6 billion in fiscal year 1983 and phase out section 5 operating assistance by the end of 1984. This bill, while containing many sound recommendations, would leave transit agencies across the country without sufficient funding to maintain service at adequate levels and would not provide sufficient capital funding for the Nation's largest transit systems which carry the majority of transit patrons to modernize their facilities and equipment.

In addition, it would reduce the federal share under the capital funding formula from 80 percent Federal/20 percent local to 75 percent/25 percent and under the discretionary capital funding program to 50 percent Federal/50 percent local. These changes in matching ratios would place many needed capital improvements beyond the reach of a large number of local governments already experiencing the loss of Federal funds in many other programs. Our local tax structure cannot stand the strain of the extra amount of local funding that would be required to finance major capital projects at the 50/50 level.

The other bill is S. 2377 sponsored by New York Senator D'Amato and cosponsored by Pennsylvania's Senior Senator, John Heinz. This legislation is closer to the proposals hammered out over the past year by the American Public Transit Association (APTA). This bill calls for a funding level of \$3.2 billion in fiscal year 1983 with a 10 percent per year escalation through 1986 and would continue the federal operating assistance program, a move we strongly support. It also proposes to continue the Federal match for formula capital assistance on an 80 percent Federal/20 percent local matching basis, but it would reduce the Federal share to 70 percent in the discretionary capital program. We oppose this change for the reasons outlined above. Further, as this bill does not exempt existing projects from the change in Federal share as the Administration's bill would, it would disrupt the local financial commitments already in place for many projects under construction, but on balance the bill is a sound one and we support it.

Both S. 2367 and S. 2377 have many good provisions. We are particularly pleased that both bills seek to simplify the UMTA grant-making process and reduce certain onerous requirements in current law such as allowing a more realistic public comment process to be developed locally concerning service and fare changes, and streamlining the certification process required in order to implement projects using the funds provided by these bills.

We note with dismay that neither bill includes reference to Secretary Lewis' excellent proposal for a five-cent increase in the gasoline tax with one penny of the five-cent increase earmarked for public transit purposes. We believe this is a sound proposal which not only will improve the Nation's highway system but will result in a much-needed boost for mass transit.

With the current transit legislation expiring partially this year and completely next year we strongly urge that new transit legislation be enacted this fiscal year so that stability and a measure of predictability can once again return to the Federal transit program. In doing so the Congress should continue the partnership that has joined the Federal Government with local communities—communities you represent—in a common cause, freedom of mobility for all people at an affordable price.

Certainly, you members of this committee must realize—and we must all join hands to help your constituents realize—that at this time in history, with our economic and national security threatened from all sides, we cannot run the risk of allowing our transportation lifelines to rust away and deteriorate beyond usefulness and the point of return and recovery.

We must, therefore, move together to implement a sound and sensible mass transit aid program which must include continuation of operating assistance as well as adequate levels of capital funding.

Thank you for the opportunity to appear before you today. I would be pleased to attempt to answer any questions you may have.

Senator LUGAR. Thank you very much, Mr. Millar.
Mr. Page.

STATEMENT OF RICHARD PAGE, GENERAL MANAGER, WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY, REPRESENTING AMERICAN PUBLIC TRANSIT ASSOCIATION

Mr. PAGE. Thank you, Mr. Chairman. I am general manager of the Washington Metropolitan Area Transit Authority, but today I am representing the American Public Transit Association as chairman of their legislative committee.

APTA includes over 350 publicly owned transit systems and nearly as many State and local government agencies, private companies, and consulting firms.

I want to commend you, Mr. Chairman, for your support of this program and the convening of these hearings, and for the introduction of your bill.

Our association is deeply concerned about the present health and future of the Nation's public transit service. This program has been a success story of Federal, State, and local governments in partnership for 17 years. Now, as Senator D'Amato said earlier, we face a crossroads.

The administration's bill, in fact, would end operating aid, prohibit new starts and extensions, reduce local flexibility, and make another major cut in funding.

Our objective as an association is to maintain the existing transit infrastructure because we think it is necessary for communities, large and small across the country, to use transit to support economic recovery and commerce. It would be extremely shortsighted to permit the decline of so vital a public service at this critical moment.

THREE MAJOR ISSUES

I would like to mention three issues quickly, Mr. Chairman, and I don't think you'll find much disagreement from me with what has been said earlier. These three issues include: Adequate funding, a responsive program structure, and local flexibility.

Nationwide, for 1983, the transit industry faces costs of about \$13.5 billion. That estimate represents combined capital and operating expenditures. We estimate that almost 60 percent—\$7.8 billion—will be available in revenues from non-Federal sources. That leaves a shortfall of \$5.5 billion. Even with the high funding levels in S. 2377, Senator D'Amato's bill, this industry faces more major fare increases and more service reductions, which have already threatened our primary objective of maintaining our current transit infrastructure.

This brings us to support, as Mr. Millar just said, new sources of revenue. We are pleased with and we have actively supported Secretary Lewis' proposal for a user fee, which would channel approximately \$1 billion in additional revenues to transit.

The second major issue is a responsive program structure. APTA strongly supports your idea, Mr. Chairman, and that of others, to use a block grant approach. We also support including in the block grant permission to use aid for operating and maintenance expenditures.

APTA has worked very hard and very long over the last year to bring together the diverse needs represented in our industry and around the country—rail needs, bus needs, big city needs, small city needs, modernization needs, new start needs. The right program for transit must address these differences. We think S. 2377 provides a more responsive approach to these different issues. In particular, it distinguishes between large and small, and bus and rail needs, it includes service factors in the formula, it has an adequate discretionary program of about 25 percent funding, and it also permits new starts and extensions. The administration bill has none of these features.

You heard from Mr. Arnold, but you could hear from many other people across the country about the importance of retaining the ability to pursue new rail starts and extensions. The administration's bill would not just delay or defer new starts, but would prohibit new starts until 1987 or later.

Other witnesses have emphasized, as I do, the importance of the reduced regulatory burden represented in both bills.

The third issue is local flexibility. The administration shares this goal but we find that their bill reduces flexibility in several major areas. It would eliminate operating assistance. It would prohibit new starts, and it has an inadequate discretionary fund.

I would like to mention one additional point on operating assistance which might be of interest to this committee. Earlier this week the Census Bureau issued a report on ridership and suggested that there was a lower number of people using transit for work trips in 1980 than in 1970. That may be true, but our information shows that overall transit ridership increased from 1970 to 1980 by 12 percent. The Census Bureau's information was targeted on work trips. But as the population shifts and cities grow, there are more and more people who are using public transit for various kinds of trips.

Between 1975 and 1980, the last part of that decade, overall transit ridership increased by 18 percent. A lot of this growth occurred in the Sun Belt and in smaller communities across the country. This suggests to us that the operating assistance program has a need and a value for many small systems and medium-sized systems in growing cities across the country. Indeed with population and employment shifts to less transit-intensive areas of the country, there would appear to be a great need to increase transit support rather than decreases.

To put the point very clearly, with reduced funding and with no operating aid, there's some danger that the Federal program would become only a big city program, and I ask whether that is what the Congress or the Nation wants?

CAP ON OPERATING FUNDS

We have one concern with S. 2377, and that is that it has a cap on operating assistance. We think that operating assistance for maintenance and operating purposes is important. We think it has proved its value. We think that a cap based on 1980 or 1981 levels is a bit arbitrary and we would hope that the committee would consider permitting the operating assistance program to grow in some way over time.

Finally, Mr. Chairman, my prepared statement does have some comments in it and information on several issues of interest to the committee—productivity, labor, fares, and some examples of innovation in the transit industry—which we thought would be of interest to the members. Thank you, Mr. Chairman.

[Complete statement follows:]

TESTIMONY OF THE
AMERICAN PUBLIC TRANSIT ASSOCIATION

Presented by
Richard S. Page

Thank you Mr. Chairman, and good morning. I am Richard S. Page, General Manager of the Washington Metropolitan Area Transit Authority and Chairman of the Legislative Committee of the American Public Transit Association.

APTA appreciates the opportunity to appear before the Subcommittee on Housing and Urban Affairs to discuss the current legislative proposals for reauthorization of the federal transit program.

This year is a critical juncture for public transit in America. Reauthorization of the federal transit program provides an important opportunity to reaffirm and improve a highly successful 17-year intergovernmental partnership. Yet the prospect of major change in the federal role also carries with it potentially harmful consequences, particularly if federal support is to continue to decline sharply as proposed by the Administration.

The transit industry is painfully aware of the economic and political forces that are being brought to bear as Congress reviews the federal role in transit. The same economic imperatives are also severely restricting state and local governments. Transit officials across the country recognize the need for all sectors of the economy to maintain service with fewer public resources. However, effective public transit services are a major element supporting the nation's efforts to rebuild and revitalize local, regional and national economies.

Considering these circumstances, the transit industry is not here to advocate major expansion of the federal transit program. Instead, we are here with one single objective: to ensure that the federal program is adequate to maintain the present transit infrastructure. We strongly urge you to embrace this same objective

as you consider new transit legislation--an objective which cannot be met without continued, broad-based federal support. Given the progress of the past 17 years and the economic role which transit plays, it would be extremely short-sighted to permit the decline and dissolution of a vital public service.

APTA Legislative Principles

The transit industry last year adopted to 10 fundamental principles which we believe should guide reauthorization of the federal transit program:

1. Federal transit assistance should be provided through a block grant mechanism which allows the local recipient to exercise maximum discretion in the use of funds;
2. Federal assistance for transit should be targeted for capital and maintenance purposes primarily;
3. Operating assistance in some form must remain a component of the federal transit program;
4. A discretionary program of capital funding should be available for major rail rehabilitation and construction projects and extraordinary bus needs;
5. In recognition of differing needs, separate bus and rail programs should be established for capital and operating purposes within a single authorization;
6. Communities over 200,000 should receive their formula funds on the basis of service and population factors;
7. Urban areas under 200,000 population should continue to receive formula funds on the basis of population and population density;
8. The Section 18 program must be preserved with funds available for operating or capital purposes, at local discretion;
9. New legislation must preserve the existing designated recipient structure;
10. To the extent that a cap is necessary on the proportion of a recipient's formula allocation which can be used for operating and operating-related purposes, it should be set at a reasonable level.

Legislation Under Consideration

With respect to the legislative proposals now before this Subcommittee, it appears highly doubtful that the Administration's bill, S. 2367, can adequately meet the primary objective of maintaining the nation's transit infrastructure. Nor does the Administration proposal adequately address the basic legislative principles established by our industry. In contrast, the proposal by Senator D'Amato and his co-sponsors, S. 2377, goes considerably further toward meeting this objective and fulfilling those principles. Let me now elaborate on the issues that we feel are critical and briefly address several related concerns.

Funding Levels

First and foremost are the overall funding levels that are to be provided and the extent to which they can meet the nation's important transit needs. Currently, APTA has projected a \$13.5 billion annual capital and operating requirement for fiscal 1983, compared with estimated non-federal revenues of \$7.8 billion. The result is a \$5.6 billion gap to maintain current and already planned systems and services. Clearly, the \$3.2 billion program level proposed in S. 2377 goes much further toward meeting these needs than does the \$2.6 billion proposed by the Administration.

Even with a \$3.2 billion funding level, state and local communities are ultimately faced with a \$2.4 billion shortfall in fiscal 1983. Transit and local officials around the country are already painstakingly pursuing all available steps to balance costs and revenues, while maintaining effective service levels. I am sure you are aware of the increasing number of instances of massive service reductions, fare increases, and resultant ridership losses. In many

areas, operators are fast approaching the point where continued reliance on these measures becomes highly counter-productive, allowing neither the retention of basic service levels nor enhanced cost recovery.

At the same time, it is difficult to foresee greatly increased contributions from state and local government. Their fiscal capacity is already stretched to the breaking point as a reflection of the same economic conditions which face the federal government. It is absolutely essential, therefore, to avoid any further reductions in transit assistance at any level; even then just to keep even it will be necessary to seek out new revenue sources.

One of the most promising examples is the user fee proposal made by Secretary Lewis, which would add approximately one billion dollars to the federal transit resource base. Adoption of this proposal in addition to funding levels at or above those proposed in S. 2377 will go a long way toward maintaining the sound transit infrastructure necessary to support national economic recovery.

Program Structure

The second major issue critical to meeting our shared objective is the structure of the federal program. Congress and the industry alike have questioned the adequacy of the current program structure and allocation mechanisms. There is strong mutual agreement that the program would benefit from restructuring.

We now have before us a golden opportunity to do just that. However, any restructuring must be approached cautiously since the circumstances facing individual transit operators vary considerably. The needs and conditions confronting small and medium-sized bus systems are vastly different, both economically and politically,

than the situations facing large systems. The needs of bus operators are substantially different from the needs of rail authorities. The comparative financial posture of transit authorities varies by city size and by mode. Any program intended to adequately support current transit services must directly reflect these differences both in its overall structure and in its allocation mechanisms.

In reviewing the legislative proposals before you, there is no question that S. 2377 provides a more effective and responsive structure than does the Administration bill. Let me assure you that APTA does not make this observation casually. The diverse membership represented by APTA has spent over a year in complex analysis and debate to arrive at a policy position and program structure that would meet the industry's widely differing needs. S. 2377 in our judgment represents the better way to reform the federal transit program. Among other features, S. 2377 provides for a separate allocation process for rail systems, large bus systems, small bus systems, and small urban and rural areas. Second, it incorporates service factors such as vehicle miles and route miles into the allocations, in addition to population factors. Both these approaches are appropriate and strongly endorsed by the transit industry.

Program Flexibility

The third issue of major significance is the need to provide flexibility in the use of federal assistance. Again, the diversity of needs within the industry dictates that the widest possible latitude be given to local officials in determining how best to utilize available resources.

The Administration has expressed strong support for local flexibility. However, their legislative proposal greatly diminishes flexibility and local discretion in several key areas. The proposed elimination of federal operating assistance is the most critical example.

The transit industry has both substantial capital and operating needs that to a considerable degree are inseparable. It is both illogical and extremely detrimental to the industry to separate the responsibility for funding these needs by assigning them to different levels of government. Unfortunately, the Administration remains insistent on this approach, limiting the federal role to capital assistance only.

In reviewing the circumstances facing transit systems across the country, it is apparent that without adequate levels of operating support, a great many agencies would be limited in their ability and willingness to provide the necessary match to draw on federal capital funds. Moreover, the withdrawal of federal operating assistance may well be the death knell of many transit systems and services across the country, particularly in medium and small communities.

APTA has conducted two surveys in recent months that confirm this point.

In August, 1981, APTA surveyed 122 transit systems on the impacts of the loss of operating assistance. Respondents indicated that:

1. 23% would have to consider ceasing operations altogether;
2. 67% would require major service cutbacks;
3. 89% would raise fares an average of 90%.

The survey showed that the most drastic effects would be felt in medium and small cities.

As a follow-up, Mr. William R. Blue, General Manager of the Mass Transportation Authority in Flint, Michigan and APTA Vice President for Small Operations, surveyed over 185 small transit properties last month, either directly or through state DOTs. The results amplify those I have just mentioned:

1. 47% of those responding directly indicated they would have to consider ceasing operations; 37% were definite about shutting down;
2. A majority indicated major fare increases would be necessary--up to 150%--even though current fares were already approaching practical limits in many areas;
3. Many indicated service reductions of 30-60% would be necessary even though services were already at bare-bones levels;
4. Most respondents were very pessimistic about the chances of increased state and local funding, since fare increases and service cuts over the last year had already eroded public support for additional revenues.

The situation is in fact desperate in many parts of the country. These impacts will be doubly cruel since the patrons of smaller systems tend to be even more needy and dependant on public transit services than riders in larger metropolitan areas.

It is apparent that the withdrawal of federal operating assistance will not only compromise the Administration's objective of enhancing local flexibility but also reduce the ability to maintain

effective service levels, both of which are vital to the national economic recovery effort. Some approach to retain a reasonable level of federal support for transit operations is essential if these objectives are to be met.

While S. 2377 provides for the use of funds for operating assistance, the proposed cap at the lesser of 1982 levels or 50% of apportioned funds is inappropriate to the needs of the industry. Secondly, operating funds must be allowed to grow at least at the same rate as overall program levels to provide the flexibility necessary to maintain effective service.

The attached letter from Mr. Thomas Albert, General Manager of the Monterey-Salinas Transit Authority, clearly states the importance of this need. We look forward to working with the Subcommittee to develop an effective approach to the continued provision of operating assistance.

Another example of reduced local flexibility and discretion within the Administration's proposal is the prohibition on new systems development and extensions. S. 2367 explicitly excludes funding for new starts and major extensions within the formula program.

In addition, the 10% discretionary capital program provided in S. 2367 is totally inadequate to allow for the development of any new systems regardless either of how efficient or cost-effective they may be or of local willingness to pursue such projects with less than full federal support.

Also, in reviewing the estimated cost for completion of new systems now under construction and major extensions of existing systems, it is virtually impossible to meet even these needs from a \$200 million discretionary program that must provide for extraordinary bus needs as well. This approach does not represent just a "delay" or "deferral" of major rail investments; it prohibits them until at least 1987.

The inherent efficiencies of high capacity, fixed-guideway services operating in densely developed cities and corridors must continue to be an option available to local officials and supported at the federal level. Senator D'Amato's bill, S. 2377, clearly recognizes this need, particularly by maintaining a sizeable discretionary account.

We support the Administration's policies to reduce federal intrusion and promote flexibility, yet the Administration's bill seriously erodes rather than enhances local flexibility.

With these considerations in mind, the transit industry has grave misgivings about both the policies and the programmatic aspects of the Administration's legislative proposal. We believe it could represent the impetus for the rapid demise of the nation's public transportation services. By contrast, Senator D'Amato's bill represents a much sounder basis for restructuring the federal transit program in a way that will maintain effective transit service and support the objectives of the Administration and the transit industry.

Before I close I would like to briefly address a few other issues which I know are of concern to you, Mr. Chairman.

Productivity and Efficiency

The argument has been made that the transit industry has not demonstrated adequate concern for productivity and efficiency, and that the availability of federal operating assistance from 1976 to the present has been a contributing factor.

This observation may result from too narrow a look at the industry's performance, particularly in recent years. In fact, the industry has been and continues to be successful in improving productivity and efficiency, particularly over the period since federal operating assistance has been available.

Between 1975 and 1980, vehicle miles of service increased 5%. Ridership increased 18% during this same time period and the cost per passenger dropped 2.7%, in constant dollars.

Between 1975 and 1980, total operating costs increased 13% in constant dollars, or 13% above the rate of inflation. However, the number of employees increased 18.5%, and the number of vehicles owned and leased rose 14.1%. It seems clear that the transit industry

has effectively stretched its dollars, including those granted to it by the federal government.

Measures to further improve productivity and efficiency are now the overriding concern of transit managers. I believe the characterizations of our industry as inefficient and lacking concern for productivity are badly misinformed.

Labor

It is well known that labor constitutes over 70% of the industry's total costs. While increases in labor costs have generally exceeded the rise in inflation, a number of factors should be taken into account before viewing this trend in the negative. First, labor rates among private operations that were converted to public authorities were particularly low, and working conditions were poor. Second, increases in federal and state requirements have led to significant increases in administrative personnel to manage a growing number of issues and requirements. Third, as equipment has become more complex with the greater application of high technology, the skill levels required of operating and maintenance personnel have greatly increased.

Between 1975 and 1980 labor costs increased 55.8% in actual dollars. Over the same period, the Consumer Price Index increased 53.1%. The resulting 2.7% increase over inflation cannot be considered irresponsible on the part of transit management, especially in view of the circumstances I have just mentioned.

In looking at transit wage rates in the nation's largest cities the pattern is even more favorable. In the ten largest cities, salaries rose by 57% from 1975 to 1981 while the CPI rose 69%; in

the forty-three largest cities hourly wage rates increased 65% over the same time period--still below the CPI.

Finally, the 13(c) labor protection provisions, as they have been applied, have strongly reinforced the bargaining position of transit unions vis-a-vis public managers. This, coupled with the highly disruptive economic impacts of transit strikes, has often placed transit managers and local politicians in a very difficult position.

Finally, local jurisdictions must contribute at least \$1 for each \$1 of federal operating assistance received. Clearly, there is no inherent incentive in the federal program for overly generous labor settlements. The labor burden is born equally by local, state, and federal contributors. When farebox revenues are included, the responsibility for labor costs falls overwhelmingly on local shoulders, not the federal government.

The industry's management is deeply committed to working with its unions and employees to negotiate changes and improvements that will enable local transit systems to be more productive, cost-effective, and adaptable to local needs and available revenues. At the same time APTA continues to advocate reforms in the administration of 13(c), rather than legislative action to alter the current statutory language. Attached to our testimony today is the policy adopted by APTA on the issue of 13(c) reform.

Fare Policy and Farebox Subsidies

It has been claimed that the industry has been inattentive to the perception that lower-income, central-city riders appear to be subsidizing the longer commuting trips of wealthier suburban riders. While this observation may hold when fare structures are analyzed in

a vacuum, it fails to take into account the distributional characteristics of other funding sources. For example, state, local, and federal assistance to transit is predominantly provided through property, sales, or income taxes. The greatest contributions to these sources generally come from other than low income central city residents. Therefore, when the entire revenue structure supporting transit is reviewed, there is a much greater degree of balance and equity in the costs paid by various groups of riders than is commonly understood.

The point is that fare structures alone are not a complete test of the subsidy and equity issue.

Finally, while some in the industry continue to rely on flat fares, nearly 1/3 of the systems providing data to APTA indicate some type of distance or zoned-based fare structure despite the difficulties and costs of administering such systems. In addition, nearly 80% use other forms of pricing that provide both incentives as well as enhanced equity.

Innovation

Finally, on the issue of innovation within the industry, let me simply say that we are making tremendous strides. I also will admit we have a long way to go. The ability to innovate is not only a function of the transit managers foresight and technical skills, but also a function of local policy-makers' willingness to take some risks in introducing new ideas and services to the public.

The industry is undertaking innovations in a wide variety of areas, both with respect to the management of traditional fixed-route, fixed-schedule services and with respect to alternative services.

Let me cite a few examples:

1. Computer-aided management analysis for:
 - comprehensive ridership data base programs
 - automated passenger counting
 - preventive maintenance
 - rider information programs
 - cash management, control, and surveillance
2. Fuel purchasing based on futures prices rather than fixed prices
3. Utilization of additives to increase engine performance and fuel consumption
4. Bus rehabilitation programs; there are now more rehab firms than manufacturers in the U.S.
5. New insurance purchasing arrangements
 - self-insurance
 - group insurance
6. Labor innovations
 - part-time labor agreements
 - new pay progression systems
 - COLA restrictions
 - lengthened adjustment periods
 - changes in formulas
 - caps
 - progressive discipline codes and absentee programs
 - direct hiring for higher skill levels
7. Internal management studies and performance audit programs
8. New financing mechanisms
 - dedicated funding sources
 - lease-back provisions under the Economic Recovery Act
 - corporate subsidy and purchase of services

9. Competitive bidding on smaller items and contracts
10. Service innovations
 - subscription services
 - employer - transit service incentives
 - joint development
 - Taxi contracts for shared-ride services
 - vanpooling programs
 - ridesharing programs

The list could go on and on. While none of these approaches is in use across the entire spectrum of transit systems, each of us is actively pursuing these and other means to make our operations leaner, more efficient and responsive to the citizens we serve.

As you are aware Mr. Chairman, transit authorities in Indiana have been very active in the area of innovation:

- Muncie has a public-private CBD station development agreement underway;
- Indianapolis, South Bend and Ft. Wayne have undertaken major management studies and have developed sophisticated management information systems;
- Gary is moving forward on a major bus rehabilitation program;
- Indianapolis and South Bend have been successful in instituting part-time labor provisions and have negotiated labor contracts that have come in under Presidential guidelines.

The industry is moving. It has demonstrated its willingness and ability to implement a broad range of innovations. As these work, their use will be expanded; unsuccessful ones will be dropped. The goal of meeting local public needs in a cost-effective way remains the same.

In closing let me emphasize that the issue is whether the federal government will continue to be an effective, full participant in the public transit partnership or whether, after 17 years, it will now choose to withdraw from the well-established purposes and objectives of the federal program.

The original federal program objectives, as outlined by Congress, are as important today in our mutual effort to promote national economic recovery as they were in 1964 and 1975.

In reviewing the two legislative proposals before the Subcommittee, we feel that Senator D'Amato's bill, S. 2377, represents the most favorable reaffirmation of these objectives and provides an effective framework by which to maintain our essential public transportation services.

Thank you.

R E S O L U T I O N
OF THE BOARD OF DIRECTORS
AMERICAN PUBLIC TRANSIT ASSOCIATION
(CHICAGO, ILLINOIS: OCTOBER 11, 1981)

Public transit service is essential to the welfare and vitality of our Nation and its economy. Threatened reductions in federal, state, and local financial support for transit and the continuing effects of inflation mean that the public transit industry has a clear responsibility to strengthen its efforts to increase productivity and reduce the rapid rate at which the costs of providing service are increasing. One of the most important elements in an industry-wide program to increase productivity and reduce costs is the labor area since labor and related costs account for approximately 70 percent of the costs of operating transit systems.

Managers in the public transit industry must be firm yet fair at the collective bargaining table where wage rates, benefit levels, and working conditions are established. Certainly management has a responsibility to its employees, whose skills and dedication make the system work, to insure proper pay, benefit levels, and working conditions. As managers of public enterprises, however, public transit managers also have a special responsibility to the riding public and the taxpayers in controlling costs and ensuring that wages and benefits are carefully managed. The industry should especially ensure that wage rates and benefits for public transit workers not exceed those of other workers in the geographic area performing similar work, and wage rates and benefits should not be based on comparisons with wages and benefits paid employees of other transit systems since they have been set under different economic and historical conditions. Particular attention must be paid to automatic cost of living escalators and other increases negotiated or imposed on management by arbitrators in the past when different assumptions about the economy and the level of public financial support for transit prevailed. Work rules providing for additional pay without productive work being

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performed must be avoided and eliminated where they now exist. The right of the industry to use part-time workers, as a logical, efficient, and effective response to the peaking of demand for transit during the morning and evening rush hours, must be secured by transit systems where such provisions promise productivity improvements in operations as well as maintenance.

States and localities should remain free, as they traditionally have in the past, to establish their own procedures and conditions for resolving impasses in public sector collective bargaining. Too often, the availability of compelled binding interest arbitration, frequently a direct result of federal regulation under section 13(c) of the Urban Mass Transportation Act, has negated collective bargaining in the public transit industry. Moreover, many arbitrators, selected from a nationwide roster and with no stake or interest in the local community, have failed to pay attention to the financial condition of the local public transit system, have disregarded a transit system's ability to pay as one of the controlling factors, and have applied outmoded standards developed at a time when the public transit industry was predominately a profit-making private enterprise.

The financial partnership to support transit among federal, state, and local levels of government has resulted in increasing federal regulation of the traditionally local collective bargaining process. A number of changes in the administration and interpretation of section 13(c) must be made to restore balance to the labor/management relationship in the industry and to support the industry's drive to increase productivity and reduce costs. Should the Department of Labor continue to delay the reform of section 13(c), the industry should demand the elimination of intrusive and unnecessary 13(c) protections in each negotiation of a 13(c) agreement even at the risk of delayed approval of federal grants. Moreover, the Department of Labor should immediately

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change its interpretation of the Fair Labor Standards Act to eliminate the unnecessary and costly burdens imposed by the Act if it is applied to public transportation.

THEREFORE, in order to provide goals for local collective bargaining in the public transit industry and the development of more appropriate policies by the federal government, the BOARD OF DIRECTORS of the AMERICAN PUBLIC TRANSIT ASSOCIATION hereby resolves that the following principles are adopted:

(1) The wages and benefits of public transit workers should not exceed the wages and benefits paid other workers in the geographic area for similar work and should not be based on comparisons with the wages and benefits paid employees of other transit systems;

(2) The public transit industry opposes automatic multiyear cost of living agreements and should act immediately to demand caps and moratoria on cost of living escalators and other automatic increases in wages and benefits in their collective bargaining agreements where necessary;

(3) The public transit industry should have the right to use part-time workers as a proven way of increasing productivity;

(4) There are a variety of ways to solve public sector collective bargaining impasses and no single method of solving an impasse, such as compelled binding interest arbitration, should be imposed on the industry. If interest arbitration is used to resolve a collective bargaining impasse, the arbitration award should always be based on a consideration of the ability of the operator, and ultimately the users and the general public, to pay any increase in wages and benefits without jeopardizing service to the public along with analysis of the other principles stated in this resolution.

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(5) The administration and interpretation of section 13(c) of the Urban Mass Transportation Act must be changed by the publication of regulations by the Department of Labor to address the following specific concerns:

- o Section 13(c) should not be used to set labor policy for localities or override state law on such important issues as whether one particular form of impasse resolution, such as compelled binding interest arbitration, must be employed when the collective bargaining process fails to produce agreement;
- o Section 13(c) should not be administered in a way that intrudes upon the traditionally local collective bargaining process in such areas as contracting out for the rehabilitation of buses or for special services to serve the elderly and handicapped; and
- o The administration of section 13(c) should be improved by setting rigid time limits on union demands, establishing a negative declaration process for routine projects that will not worsen the condition of employees, and creating a procedure in the Department of Labor to set minimum 13(c) conditions where agreement at the local level is not reached.

6. The Department of Labor should immediately rescind its regulation applying the Fair Labor Standards Act to the public transit industry.

Eugene M. Barnes
Chairman

Leonard Ronis
President



Monterey-Salinas Transit

April 23, 1982

Mr. Jack R. Gilstrap
Executive Vice President
American Public Transit Association
1225 Connecticut Avenue, N.W.
Washington, D.C. 20036

Re: S. 2367 and S. 2377

Dear Jack:

Having reviewed both bills briefly, we of course very much prefer Senator D'Amato's approach. However, I would like APTA to consider raising two points:

1. Smaller systems in particular have considerable variation in capital needs from year-to-year. We may buy a new fleet of buses this year, and then have no further bus needs for five years. Therefore, a rigid 50 percent limit on formula funds for operating purposes makes rational financial planning difficult. If we must have a 50 percent cap, how about a 5-year moving average? Or, better yet, allow an exemption for systems which can prove that they have modern and adequate bus fleets and facilities, and therefore a forced capital investment program would be "gold plating."
2. The limit on operating funds to the FY 82 level may be relevant to only the smaller operators, but for some of us it really hurts. Some urbanized areas have experienced radical changes in their populations and urbanized area boundaries. This limitation hurts some of the smaller operators without really affecting the overall impact of the UMTA program.

Thanks for your consideration and good luck!

Sincerely,

A handwritten signature in cursive script that reads "Tom Albert".

Thomas D. Albert
General Manager

TDA:bhc
cc: Bill Blue

Senator LUGAR. Thank you very much, Mr. Page.

At this time the committee would like to ask questions. If it is agreeable to my colleagues, could we try to hold our initial round to 5 minutes each. If there are pressing questions beyond that, certainly the Chair will entertain additional rounds, but at this point I'd like to call on the distinguished Senator from Texas to open the questions.

Senator TOWER. Thank you, Mr. Chairman.

I'd like to ask Mr. Arnold what factors would you recommend to be a part of any formula grant program in order to recognize the transit needs of growth cities such as Houston?

Mr. ARNOLD. Basically, we think that population should be perhaps 50 percent of the formula and that the other 50 percent should be based on service factors. I think it's essential that population be an important ingredient of this and I might comment also that the 1980 census as opposed to the 1970 census figures should be used. In some of the earlier drafts of legislation I saw some 1970 figures still being used. We believe that population figures, though imperfect in many ways, will recognize growth as well as what has to be done to maintain existing systems in the older established northeastern cities.

Senator TOWER. Thank you very much.

Senator LUGAR. We request that members of the panel respond to those questions and hopefully quickly because we are going to move to markup and you all want to expedite that process. Thank you, Senator Tower.

The distinguished Senator from Illinois, Senator Dixon.

Senator DIXON. Thank you, Mr. Chairman.

Mr. Ravitch, I'd ask you whether you believe, on the basis of the experience you've had in New York City and in New York State, that the local governments and State governments can adequately finance the metropolitan transit systems in our major communities of the country?

Mr. RAVITCH. As a matter of personal philosophy, I think the burden should be shared with the largest group of taxpayers in this country, the Federal taxpayers, and that the burden should not be placed uniquely on the taxpayers of New York. You distinguished gentlemen have heard many times that New York City is not just a New York asset; it's the Nation's asset, and the mass transportation system is inextricably linked to the city's survival.

On the other hand, I would be less than candid with you if I didn't tell you that if the reduction in Federal aid is inexorable, the evidence last year was that the business community and the civic community and the elected officials of New York were prepared to take up the burden. And as long as those responsible for policy in the Federal level recognize the fact that the incidence of taxation is merely going to shift—that tax reductions at the Federal level will mean higher increases at the local level—and measure carefully all the consequences of that shift to the Federal system and to other issues of equity that are dealt with by people in public service, then I think it's reasonable to answer your question that I think there will probably be a funding increment at the local level.

FAREBOX FINANCING

Senator DIXON. You would certainly agree, I assume, and I presume all witnesses would, that you can't finance a transit system out of the fare box; you have to have other sources of revenue to do the job.

Mr. RAVITCH. Clearly. In New York right now, 52 percent of our operating budget is covered by fare box revenues.

Senator DIXON. And I think Mr. Millar had suggested around half in Pittsburgh?

Mr. MILLAR. Yes, sir.

Senator DIXON. What's your experience, Mr. Arnold, in Houston.

Mr. ARNOLD. Our experience is not as good as other cities. We're only getting approximately 28 to 30 percent out of the fare box today, although one of our prime objectives is to increase that to 50 percent. Our bus service has been so poor that we have not been able to get the fares up until we get our service up, but we're working on it.

Senator DIXON. But it is clear, I think, the national experience has been that if you're doing about half or so out of the fare box you're doing very well. As a matter of fact, my own information has been over the years in my observation of major communities in my State is that as you raise the fare in the fare box you have a diminution in ridership for a period of time at least, so there's an adverse experience as Mr. Arnold has suggested.

Mr. RAVITCH. I might comment, Senator, that our experience is that the use of the system is less affected by the level of fare than it is by the state of the economy, general employment, conditions in the region, and by the quality of the service, as Mr. Arnold mentioned. That is why the provision of capital funds unfettered by what we consider unnecessary Federal regulations is so critical. We believe that the best kind of dollars to get are the increased user charges which will come when we have a revitalized and rebuilt system. That's why that is the critical item on our agenda.

Senator DIXON. Did I sense too from the entire panel universal support of the concept that something should be done to support operating expenses at the Federal level? Was that the view of each of you? I don't know that I interpret that from your statement, Mr. Arnold.

Mr. ARNOLD. I did not comment on operating assistance. Houston has not used any Federal funds for operating assistance, but we feel our greatest need is in the capital improvement area. We can handle our operations with our penny sales tax right handily.

Senator DIXON. Mr. Millar, you and Mr. Ravitch and Mr. Page all believe that there should be a provision for operating expense support at the Federal level as well. I sense that in the case of everyone of you, you felt there was much to be recommended to us in the bill that has been introduced by my warm and distinguished friend from New York and my friend, the distinguished Senator from Pennsylvania. Is that a fair statement, that as an alternative of the two bills, you prefer that bill?

Mr. RAVITCH. Yes, sir.

Mr. MILLAR. Yes, sir.

Senator DIXON. One other question, Mr. Ravitch, that intrigues me, is the suggestion of the amendment that you have made in your statement in which you suggest that for this purpose new capital may improve the proceeds of bonds issued by transit systems, secured by a pledge of system operating and subsidy revenues both, so long as such pledge does not include the pledge of revenues provided by the Federal Government. That would not be permitted under existing law, I take it from your testimony?

Mr. RAVITCH. That is correct, Senator.

REVENUE BOND ISSUE

Senator DIXON. And what you propose to do here is to be allowed, if we were to see fit to adopt this amendment as part of the bill that is ultimately marked up in this committee, to be allowed to issue revenue bonds to be financed from subsidies of the city of New York plus whatever fares you may realize at the fare box.

Mr. RAVITCH. We don't need authority from the Federal Government to issue those bonds. Those were authorized by State law and we're in the process of preparing to issue over \$2 billion of such bonds in New York.

What we object to is that the proceeds of those bonds cannot be used as local match to Federal grants, which means that after having raised the fare and raised the local taxes in order to support the debt service on these bonds that we'll have to come up with additional local funds from other sources to meet the requirements for local match. And we think that is totally inconsistent with the thrust of Federal policy, as well as being totally unfair. The intent of the Congress, when it provided for local match and the initial funding concept was to insure that no locality would rely, as Mr. Arnold articulated very well, totally on Federal aid and that the Federal program would be an inducement for local government to spend some of its own resources. The proposals that Mr. Arnold and I have been talking about that induce local government to spend more seem to me very much consistent with the thrust of Federal policy.

Senator DIXON. I would appreciate it very much if you would give me any further information you have regarding this in view of the fact that my State and the city of Chicago might have some similar interests to yours and I would like to inquire more fully with the Governor of my State and the mayor of the city of Chicago. Would you make that available at your earliest opportunity?

Mr. RAVITCH. I'd be delighted to, Senator.

Senator DIXON. One final question of you, Mr. Arnold, in view of the fact that our situations could be somewhat different, in your suggestions to the distinguished Senator from Texas, Mr. Tower, in reference to the formula grant program, I certainly understand the first half. The service based factors that involve the other 50 percent that you talk about, could you just briefly indicate to me what that would contemplate?

Mr. ARNOLD. The miles being served by each system is a part of the formula. However, since we don't yet have the quantity of service in Houston and some of the other growth cities that the older,

established cities do, we don't think that undue weight in the formula should be given on the basis of service.

What that would tend to do would be to send all the money back to the older cities with the established systems to the detriment of growth cities. We recognize that there must be some weight given to service factors and for that reason we are suggesting that perhaps 50 percent of the formula based on passenger miles being served and 50 percent on population.

Senator DIXON. If I might just inquire from the other three panelists very quickly about their view of that, I'd appreciate their observations.

Mr. PAGE. APTA supports that proposal. The problem with the operating assistance programs since 1974 has been that it has been based only on population and population density factors. Each time it has come before the Congress, everybody is dissatisfied with it, but as Mr. Arnold alluded to earlier, nobody can find or has been able to invent a better formula.

We have talked that through over the past year and APTA supports a combination formula which uses population but also allows some emphasis on service.

Senator DIXON. As suggested by Mr. Arnold of a mix?

Mr. PAGE. Yes, sir.

Senator DIXON. Can States like mine participate in that?

Mr. PAGE. Yes, sir.

Senator DIXON. I know they participate in your organization very actively.

Mr. PAGE. Yes, sir; very actively.

Mr. MILLAR. I'd like to comment on that if I might. We feel very strongly that the orientation must be as much as possible toward the service variables. Again, communities perhaps such as Chicago, certainly like Pittsburgh, made an investment in their private and public transportation systems over the first 70 or 80 years of this century. We made it without Federal aid and we do feel that we ought to be recognized for having made that investment in the future.

Senator DIXON. I thank the Chair.

Senator LUGAR. Thank you very much, Senator Dixon.

Senator D'Amato.

Senator D'AMATO. Thank you very much, Mr. Chairman.

IMPACT OF CUTBACK IN OPERATING ASSISTANCE

I'm wondering, Mr. Ravitch, if you would not comment on the type of planning that the MTA has embarked upon in terms of your new 5-year capital improvement program and if the administration's proposal were to be adopted the impact that this would have in implementing the program of modernization, and so forth, that you have for the metropolitan area.

Mr. RAVITCH. Senator, are you talking about the provision—the distinction in your bill as to the set aside for—

Senator D'AMATO. I'm talking about the cutback in operating assistance and what impact that would have in your overall 5-year \$7.4 billion modernization program which the legislature has adopted. What impact will that have?

Mr. RAVITCH. A reduction in funding will require either an elimination of a number of critical capital projects or additional state subsidy, or it will mean—

Senator D'AMATO. How likely is that additional State subsidy?

Mr. RAVITCH. Senator, I cannot predict the actions of our State legislature with respect to the budget the State will enact for the forthcoming fiscal year.

Senator D'AMATO. I've never heard you understate it so before. Given the battle to produce the program that we have to date, I'll make the observation that there will be no additional subsidies that will come in the future from the State legislature. I just don't see it. I'd like to hear your analysis.

Mr. RAVITCH. Well, Senator, my job is to try to persuade people to do precisely what you're predicting they won't, so I can't very well concur in your pessimism, but I certainly respect your political prescience more than mine.

Senator D'AMATO. That's giving me the ball right back again. I haven't been too successful with that group up in Albany.

Let me ask you this. Frequently we hear, oh, you're just encouraging nonproductivity and waste, and so forth, by having operating assistance continue. I think it's important that the public get a perception of what types of programs do we include in operating assistance. Is that maintenance as well? Is keeping the rails cleared and clean included? Would you comment on that?

Mr. RAVITCH. The permitted uses of traditional section 5 funds have covered not just the cost of normal operations but the cost of maintenance of the system as well. These annual maintenance costs include items that are not capitalized. In the past, until our legislation was enacted last year MTA never had a capital budget and essentially relied on the beneficence of the Federal Government supplemented by the sale of State bond issues.

So if I understand your question correctly, the answer is that the operating assistance is critical. There's not the slightest shred of evidence that public assistance affects the productivity issue one way or the other. Productivity is a problem that plagues our country. It probably affects the public sector more seriously than it affects the private sector, but we all know that productivity is down in the private sector as well. Eliminating public subsidy isn't going to affect the work output of the average hourly employee. In point of fact, I know the administration has often cited that as a reason to eliminate operating assistance, but has not suggested any remedies in the law with respect to the jurisdiction of State labor laws as against Federal railway labor laws to help insure our ability to affect our productivity measures in collective bargaining more usefully than we can under Federal law.

Senator D'AMATO. The diminution of funding isn't going to increase productivity?

Mr. RAVITCH. It certainly is not.

Senator D'AMATO. One other question. We've just had a fare increase of how much for the subway in New York?

Mr. RAVITCH. We had last July a fare increase of 15 cents on the subway. It went from 60 to 75 cents on both the subway and buses and comparable percentages on our commuter lines.

Senator D'AMATO. What percentage is that approximately?

Mr. RAVITCH. Approximately 25 percent.

Senator D'AMATO. So we had a 25-percent fare increase in the fare box.

Mr. RAVITCH. The previous year we had a 20-percent increase.

Senator D'AMATO. What do you project in the years ahead, next year, the year after, in terms of fare increases that the commuters will be called upon to pay without any major change; in other words, if we were to keep the operating assistance basically as the formula that Senator Heinz and I have put forth? Do you project increases at the fare box again?

Mr. RAVITCH. Senator, I project that we will have a deficit this year for three reasons. One, the failure of the tax package enacted by the New York State Legislature to produce what they assumed it would; two, because of the labor increases that we'll be paying this year in amounts which we will not know until we receive the results of a pending arbitration award; and three, because of certain other small increases in expenditures in order to improve the quality of the service. I cannot at this point project what the level of fare increase will be except to say that it is my conviction, with all respect to your judgment, that the State of New York is, as I responded earlier to Senator Dixon, more likely than not, to provide an increased amount of State subsidy to insure that the proportion of the percentage of our operating budget that is covered by the fare box is not changed dramatically, and I'm confident or at least hopeful that the legislature will do that.

So I would imagine that there probably will be some fare increase as the costs of running the system go up. That's probably due more to inflation than to any other factor.

Senator D'AMATO. I think that's important to get the point across that for the last 2 years we've had fare increases of 20 percent and 25 percent, that the legislature has increased quite dramatically its contribution to these systems, and that in spite of that there will be another fare increase as a result of the deficit that you mentioned. So that New Yorkers will, in any event—and not only New Yorkers but people in New Jersey and Connecticut, those who are dependent upon this system—will experience a fare box increase which would be greatly exacerbated with the loss of operating assistance. Is that not correct?

Mr. RAVITCH. That's correct, Senator.

Senator D'AMATO. So we would then have another 20 percent increase or in that range if we looked to history as a guide and on top of that a fare box increase of about 15 cents for each rider. Is that correct?

Mr. RAVITCH. Senator, I can't concur in that projection for the reasons I stated. I don't know what the results of our labor negotiations will be and I don't know yet the decisions that will be made by the State legislature.

Senator D'AMATO. The loss of operating revenues would increase the fare box by about how much?

Mr. RAVITCH. If the only variable were the difference between the administration's new proposal level of authorization and that which was part of the legislation last year, that would have a nickel impact on our subway fares. The full elimination of operat-

ing assistance will eventually mean a 15-cent increase unless other sources are provided.

Senator D'AMATO. Thank you very much.

Mr. PAGE. Might I give you a couple figures for the Nation that we have through the American Public Transit Association? Operating costs are about \$7.5 billion. Of that, we think about 30 percent is for maintenance, \$2.2 billion. Of that, \$1.1 billion comes from the present level of Federal operating aid or about 14 percent of total operating expenses. It's less in New York. It's less in Washington. It's less in Houston. It's less in Pittsburgh. It's more in some of the medium and smaller sized cities. We estimate that if the \$1.1 billion were eliminated, as the administration proposes, then systems across the country as an average would have to raise fares by 40 percent just to cover that loss, and that is over and above the normal annual fare increase which all of these cities and most cities have gone through.

Senator D'AMATO. So you would have 20 percent plus your 40 percent which is 60 percent. Didn't you get a very interesting statistic that indicated—and again particularly with the smaller cities—that 25 percent of transit properties indicated that they would consider abandoning their operation, closing down?

Mr. PAGE. Yes, sir. That's correct.

Senator D'AMATO. Thank you very much, Mr. Chairman.

Senator LUGAR. Thank you, Senator D'Amato.

Senator Brady.

Senator BRADY. Thank you, Mr. Chairman. My questions have all been answered by the testimony and previous questions.

Senator LUGAR. Thank you very much.

Senator Heinz.

Senator HEINZ. Thank you, Mr. Chairman. I'd like to address some questions particularly to Bill Millar who's come down from Pittsburgh.

Bill, the port authority has had considerable amount of experience over the last several years with raising its fares?

Mr. MILLAR. Yes, sir.

EFFECT OF INCREASED FARES ON RIDERS

Senator HEINZ. When you have raised your fares, what percentages have you raised them by and what has been the effect on ridership?

Mr. MILLAR. Well, in the last 2 years we raised our fares by 50 percent approximately. The effect on ridership has been what I would term extremely predictable; namely, ridership has fallen off. It has fallen off in certain market segments much more so than in other market segments. For example, the discretionary kind of trip that a person might make just in fulfilling their daily needs such as shopping or personal business trips, these type of trips, some people will call them life enriching trips—generally those are the ones that go first, and we've seen a very strong drop in that particular area there.

In certain of our routes that serve areas of high unemployment, particularly in the steel valley in the Pittsburgh area, ridership on those routes is off as much as 20 to 25 percent correlating I'm sure

both to the unemployment in the area and the fact that the fare has been raised significantly. So it's not been a happy experience.

Senator HEINZ. You mentioned the discretionary trips. Are those a large part of your revenues?

Mr. MILLAR. They are certainly a significant part of what we term the midday—that portion between the two peak hours. They represent perhaps as much as half of those trips.

Senator HEINZ. I think it's important to note while there may not be a tremendously large amount of revenue, I suspect that they mean an awful lot to the merchants in the city and I imagine they mean a great deal to the vitality of any urban area.

Mr. MILLAR. Yes, sir, I would agree with you, and not only in the downtown area but many of our neighborhood shopping areas, many of our older milltowns as we call them in Pittsburgh that have struggling business districts, the people just aren't able to get there because, of course, the ridership falls off then we are necessarily forced to examine those routes and have had to cut service back in addition to the fare increases. So we're now running approximately 1 million miles less bus service and trolley service in Pittsburgh now than we were 2 years ago.

Senator HEINZ. Now because you have taken some fairly strong actions over the years and because of the way the formula works, only about 10 to 12 percent of your revenues come from the Federal Government?

Mr. MILLAR. That's correct.

Senator HEINZ. As you pointed out in your statement, you have a fairly generous State appropriation, around \$30 million. The Federal operating assistance is about half of that.

Mr. MILLAR. Yes, sir.

Senator HEINZ. But the smaller transit authorities in our State and elsewhere derive a much higher percentage, as much as 40 or 50 percent. We've had some testimony as to what would happen in the bigger systems. What would be your appraisal of the phaseout within 2 years as proposed of operating assistance on the smaller transit systems such as Scranton and others in Pennsylvania.

Mr. MILLAR. Yes, sir. Approximately 3 weeks ago I had the privilege of attending a statewide meeting where transit agencies from all over the State of Pennsylvania were participating under the sponsorship of the State Department of Transportation, and the executive directors from the smaller transit authorities literally do not know what they're going to do. At least four of the smaller transit authorities in Pennsylvania have publicly stated that they will simply have to go out of business if the operating assistance is phased out.

Senator HEINZ. How many smaller systems are there outside of Pittsburgh and Philadelphia?

Mr. MILLAR. Outside of Pittsburgh and Philadelphia, there are approximately 12 in what I'll call the small urban areas, and then there are another dozen or so in what would be very small towns and rural areas of the State.

Senator HEINZ. The number four, is that of the small urban?

Mr. MILLAR. Yes, sir.

Senator HEINZ. So one-third at least that we know of simply plan to go out of business. They wouldn't even fight it. They would fold the tent immediately.

Mr. MILLAR. Yes, sir. From what they say, that's true.

Senator HEINZ. That's called a one-third cut in service, isn't it?

Mr. MILLAR. That's right.

Senator HEINZ. The mass transit authorization expires this year, if I'm not incorrect. What happens to you—what happens to mass transit if we don't reach agreement and the President doesn't sign into law a new mass transit authorization? Would that mean the end of all funding or is there budget authority that you could somehow limp by on?

Mr. MILLAR. Well, as I understand it—and I certainly don't propose to be an expert in all the whys, fors, and wherewithals of budget authorities and such matters, but as I understand it, even though we have a commitment from the Federal Government, for example to provide the funding for a substantial part of our new light rail system and although we have been consistently receiving annual drawdowns to provide funds for that system, if the bill were not extended and the program killed, we would not be able to receive additional money in the future over and above what has already been committed and authorized. That would leave us with approximately half a system built, approximately \$265 million invested, and no way to run the system.

That's an example of what would happen in capital assistance. In operating assistance, again, I think the panel members have adequately demonstrated that what would happen there is that we would see further service cuts which the public strongly opposes. We would undoubtedly see additional fare increases and we would see further economies taken by all the transit authorities in the State.

Senator HEINZ. Focusing in on capital assistance a little more tightly, you mentioned and all of us in Pittsburgh are well aware as we try and navigate the streets of downtown Pittsburgh, that there is a major capital project funded through the discretionary program now underway.

Were the administration bill, which has a 50 percent local match requirement, to be enacted for discretionary capital projects, what would that mean to the Pittsburgh light rail vehicle system that you're trying to complete?

Mr. MILLAR. Well, as I understand the administration's bill, they have what I'll term a grandfather clause, so presumably we would be able to finish at least that much of the project that is currently underway, but certainly the extensions to that system and the further improvements to that system which have not yet been committed to but are on the drawing boards, in my opinion, could never be constructed in Pittsburgh. The amount of money that would be required to be raised from local sources simply would not be there. In Allegheny—and again, this is a little bit off the topic—but our county commissioners have recently published a study which shows the need for capital dollars for all types of infrastructure, not just the transportation system but the sewer and water system and the airports—

Senator HEINZ. Don't forget the bridges.

Mr. MILLAR. The bridges. I was going to mention that next, sir. I know that's a topic near and dear to your heart and ours too. We have some 32 detours on our bus routes simply because bridges are closed right now.

But the commissioners have estimated that literally billions of dollars are going to have to be generated, much of it from the local tax base, to fund those necessities. How the transit improvements would fare when put up against the need for a new sewer system, for example, I certainly wouldn't care to predict.

VALUE OF MASS TRANSIT

Senator HEINZ. One last comment or question, Mr. Chairman, and that is, in Pittsburgh we're very proud of the renaissance we went through 20 or so years ago. We're going through a second renaissance we're equally proud of today. Could you tell us, Bill, what you think the effect would have been on Pittsburgh's renaissance if we did not have what we have today in the way of mass transit?

Mr. MILLAR. I don't think there's any question that the renaissance of 30 years ago nor the renaissance of today could occur if we didn't have a strong mass transit system. Every morning we bring in approximately 60 percent of the 130,000 or so workers who come to work in downtown Pittsburgh. The new office space which will be opening up in the next few years will have room for another 30,000 jobs. Even though the bridges and highways are starting to be fixed up in Pittsburgh, there simply is no way that you could accommodate the existing 60 percent or so that we bring in by public transit, and you certainly could not accommodate the kind of growth that 30,000 new employees in the downtown area would bring.

Senator HEINZ. Mr. Chairman, I just want to emphasize that point. We have many urban areas that—we talk of need for urban revitalization and we talk of the need for an urban policy, and I hope we never forget in this committee in particular that probably the most important single program we have when it comes to urban revitalization, urban renewal—small “r”—urban renaissance is the mass transit program for the reasons just described by Bill Millar. Thank you, Mr. Chairman.

Senator LUGAR. Thank you very much, Senator Heinz.

I would simply add that we are grateful that four great cities are represented by each of you and, of course, Mr. Page speaks in behalf of over 300 cities in this country. Senator Heinz' questions and dialog were focused on a very critical point that we face in this subcommittee and the committee and the Senate as a whole, and that is, how really to go across this delicate route of finding formulas that are acceptable to our President and his administration, and to whatever may be the budget formula. It's going to either occur at the summit or through our budget committees, but at some point this committee will receive, if not marching orders, some ceilings and constraints we shall have to work with. So it's not an easy task. I know you appreciate that and I make the point not in terms of a question but just as a request that you stay with us in the next 2 or 3 weeks, at least in communication, because I

suspect that we will have to try to think very carefully together if we can reach some consensus among the major systems as well as the smaller systems and the budget problems that all of our colleagues as well as ourselves face because it's critical to come up with a bill ultimately.

We appreciate your help today and we request it for a few more weeks to come and we are grateful to my colleagues for their questions.

At this point we will dismiss you and call the next panel.

Again, the Chair calls forward a panel including the Honorable Gordon Bricken, Mayor of Santa Ana, Calif., representing the United States Conference of Mayors; and Councilwoman Minnette Trosch of Charlotte, N.C., representing the National League of Cities.

We're grateful that you're here this morning. You've heard at least a portion of the testimony of the preceding witnesses, but we are eager for an independent point of view on behalf of those who represent the great cities of our country. I'd like to call upon you in the order that I introduced you and, first of all, Mayor Bricken, would you testify?

STATEMENT OF GORDON BRICKEN, MAYOR, SANTA ANA, CALIF.

Mr. BRICKEN. Thank you very much, Mr. Chairman. I'm presently tearing my testimony apart. At your suggestion earlier, I'm marking all of this up and trying to not only carry the flavor of the meeting but to inject my own personal observations which I know that you're interested in having the local experience reflected in your testimony.

[Complete statement follows.]

STATEMENT OF

THE HONORABLE GORDON BRICKEN
MAYOR OF SANTA ANA, CALIFORNIA

on behalf of

THE UNITED STATES CONFERENCE OF MAYORS

Mr. Chairman, members of the Subcommittee, I am Gordon Bricken, Mayor of the City of Santa Ana, California. I am here this morning on behalf of the U.S. Conference of Mayors which is composed of the nation's principal cities. Within the Conference I serve as a member of the Transportation and Communications Committee.

A Year of Progress

The Conference appreciates the opportunity ~~to share~~ our views with you today. This hearing marks the anniversary of perhaps one of the most creative and thought provoking years in the history of the national public transportation investment effort. From a position of considerable alarm one year ago following the Administration's initial transit proposals, all parties involved -- cities, the Administration, and transportation committees on both sides of the Congress have engaged in a forthright and open process aimed at achieving a consensus on transit legislation for the 1980s.

In that time period, we have made very real progress. A considerable portion of the credit belongs to you, Mr. Chairman, and to members of this Subcommittee on both sides. By signalling a year ago that you would not close the door to responsible improvements and alternatives to the Administration's proposals, you have helped to bring about a number of new ideas and approaches to transit legislation. In so

doing, the hopes of the nation's Mayors for a transit program which makes sense for cities, have been sustained.

It is our intention to ensure that this cooperative march towards consensus is advanced.

Towards that goal, the Conference would like to make a few comments on the urban infrastructure, transportation, resources and revenues, the various reauthorization proposals, and our hopes for the coming days.

The Urban Infrastructure

Mr. Chairman, the urban infrastructure is at the top of every Mayor's agenda in cities of all sizes and regions across the country. Our roads, streets, highways, bridges, and public transportation systems, are important not only because they form the urban transportation system, but because they also provide the basis for economic growth and development. Cities on their own are raising taxes and adjusting priorities to the extent that we can to deal directly with the infrastructure problem. But in order to effectively lay the basis for the job development and business expansion and retention, the infrastructure problem must be viewed as a local-state-federal partnership. This Subcommittee has exhibited a keen sensitivity to the necessity and desirability of this partnership. We are hopeful that this concept will continue to guide your efforts as we move towards reauthorization.

Revenues and Resources

Mr. Chairman, the issue of overall transportation resources and revenues is one that is of considerable concern not only to Mayors, but to several Committees of the Congress, as well. The Conference has recognized that there simply are insufficient revenues existing to adequately meet national transportation responsibilities. In cities all across the country, user fees and other revenue raising devices are being increased to meet the cost of public services. It is time for the federal government to do its part in this area.

That is why the Conference, along with many other organizations, has been pleased to provide solid support to Secretary Lewis' plan to increase highway user fees by five cents, with one cent earmarked for public transportation purposes. We are hopeful that proposal will soon come off of the President's desk and into the Congressional hopper for speedy Congressional consideration and enactment. It is essential for a reasonable, long-term reenactment of public transportation legislation and we look forward to working with the members of this Subcommittee to make it a reality.

Public Transportation Reauthorization Proposals

Mr. Chairman, there have been two major proposals to reauthorize public transportation legislation before this Subcommittee. There will likely be others shortly. Overall,

this vigorous interest can only work to increase the quality of the final product of this Subcommittee.

The Administration's Proposal. Mr. Chairman, following the failure of the House or Senate to enact its transit proposals last year, it is evident that the Administration spent considerable time in a process of reflection and rethinking of its initial proposals. Its recently submitted legislation is an improvement of the 1981 version, for which it is to be commended by all. By moving closer to the block grant concept, the Administration has been able to get its transit posture more in tune with its overall support of the block grant mechanism. Its proposal to distribute block grant funds equivalent to the cities' share of total non-federal transit revenue, is a unique and innovative idea, which certainly deserves a serious look.

However, our recognition of some progress on the part of the Administration's approach is far outweighed by the fact that there has been no real movement regarding its insistence that no funds from the newly-proposed formula program be used for operating assistance. Movement towards the block grant concept cannot truly be genuine unless there is sufficient flexibility for the use of funds at the local level. The operating assistance program is essential to the vitality of transit at the local level. Our most recent survey of cities indicated that if the Administration's operating phase-

out was actually enacted, the results would mean further fare increases, as well as service cuts and eliminations. Though it has a different impact in each locality, cities must retain the ability to use a portion of the national public transportation investment program to meet the enormous pressures and costs of running transit systems.

Senator D'Amato's Proposal. S.2377, the Mass Transportation Act of 1982, introduced on April 15 by Senator D'Amato, and cosponsored by Senators Heinz, Weicker, and Moynihan, has many excellent attributes. First, by significantly increasing proposed authorization levels over those suggested by the Administration, S.2377 recognizes that the federal government must provide adequate funding to meet the basic requirements of an effective transit program. Secondly, with a discretionary program of 25 percent and a formula program with distinct attributes for all city sizes, S.2377 recognizes that public transportation must be a national effort, with a window for every city of every size in all regions of the country. Third, by placing the formula program in the context of a flexible block grant available for both capital and operating purposes, but with a ceiling on operating share equivalent to the FY1982 level, S.2377 recognizes that transit needs in cities are diverse and that the federal response to those needs must be equally diverse. Overall, S.2377 is a comprehensive and responsible proposal

which should greatly advance the work of this Subcommittee.

Forthcoming Proposals. Mr. Chairman, the Conference of Mayors would also look forward with great interest to the substantive proposals which we would expect to be forthcoming from the leadership of the Subcommittee on both sides of the aisle. The Subcommittee leadership has not lacked for innovative approaches to public transportation problems, and we anticipate their unveiling over the next several days with enthusiasm.

Towards Public Transportation Reauthorization

Mr. Chairman, with the full Banking Committee laboring under the requirement to report legislation to the floor by May 15, there is considerable work ahead in the next 17 days to forge a workable proposal which can not only enjoy the support of the Committee, but of the Senate as well. From the perspective of the Conference of Mayors, having worked with every member of this Subcommittee, we believe that a general consensus regarding transit reauthorization exists. We will hope to work with you in the days ahead to see that it is shaped and ratified.

Mr. Chairman, thank you for the opportunity to meet with you this morning. The Conference would be pleased to take whatever questions the Subcommittee might have.

Senator LUGAR. Thank you very much, Mayor Bricken.
Councilwoman Trosch.

**STATEMENT OF MINNETTE TROSCH, COUNCILWOMAN, CHAR-
LOTTE, N.C., REPRESENTING THE NATIONAL LEAGUE OF
CITIES**

Ms. TROSCH. Thank you, Mr. Chairman.
[Complete statement follows.]

STATEMENT
OF
MINETTE TROSCH, COUNCILMEMBER, CHARLOTTE, NORTH CAROLINA
FOR THE
NATIONAL LEAGUE OF CITIES
APRIL 28, 1982

Mr. Chairman and members of the Committee, my name is Minette Trosch, councilmember of Charlotte, North Carolina, and Vice Chairman of the National League of Cities Steering Committee on Transportation and Communications. I am testifying this morning on behalf of some 15,000 direct and indirect member cities, ranging in size from as large as Los Angeles and New York to as small as Warsaw, Indiana, and Paw Paw, Michigan.

This morning, I will be pointing out general issues which the National League of Cities believes the Committee should consider in reauthorizing public transportation legislation. Should members of the committee have specific questions about either of the bills pending before you, I would be pleased to respond.

Our priority in any consideration is to insure continuity of operating assistance. For cities, public transportation is just what its name implies--a public service. It runs like public libraries, parks or other community services. It does not pay for itself. It could only pay for itself by ignoring the needs of the elderly, the handicapped, the poor, and the unemployed. We determine routes and service at the local

level to meet human transportation needs. We make that decision cognizant that from an economic perspective, public transportation is the most efficient means to transport people to their jobs, especially at a time when city highways are limited both in capacity and in operating condition.

Our concern about operating assistance is based on realities with which we have been confronted. We cannot, as Secretary Lewis has said, rely upon the fare box. Like the celebrated Laffer curve, many cities have already reached a level where increased fares produce such a reduction in ridership that revenues decrease. At the same time, many cities have not been granted legal authority by their state legislatures to raise their own sources of dedicated revenues. Thus, in recent months we have seen cities such as Birmingham, Chicago, and Memphis appeal to their state legislatures for the ability to tax their own constituents to support operating costs, and be rejected. If operating assistance is phased out as the administration has suggested, there is little chance for these cities to continue to provide service. In our view, moreover, such a phaseout would most adversely affect those cities with the highest levels of poverty and unemployment, and those most restricted in replacing lost federal operating assistance with other state or local revenue.

Flexible Formula Grant

We believe, then, the committee should retain operating assistance. That retention, however, should be based upon incentives for service, efficiency, and productivity. Rather than abruptly terminate operating assistance after years of

federal encouragement because it has somehow become per se evil, we would recommend developing an incentive for communities to become more self sufficient.

We believe that creating a flexible formula grant with an incentive to use federal assistance for capital purposes is a good approach. If a community is given the option of using funds for operating or capital, but receives a greater federal share when funds are used for capital, there will be an affirmative incentive in the law to use federal funds for capital purposes, but with an understanding that each and every city in the country has diverse and distinct circumstances and needs. Ypsilanti, Michigan, for example, with its high proportion of riders at or near the poverty level; New Castle, Pennsylvania, with the majority of its riders being senior citizens without automobiles; and Memphis, Tennessee, which has had to severely curtail service, are cities which cannot meet any cost benefit test for spending federal funds on capital. For these cities, operating assistance is very much needed to keep their reduced systems running. Yet, there are cities which, because of their economic base, or the current economic circumstances, could forego operating assistance entirely if given a better choice. The creation of a flexible, formula based grant with an incentive for capital is a positive direction.

In this context, I would share with the committee a concern over the approach offered by the administration. The administration proposal to curtail the use of operating assistance, but provide a higher federal match for the use of

capital would, it seems to me, drive cities to defer maintenance. For, as operating assistance is drastically reduced, cities will have less funds to run their systems. If they are able to receive 75 percent federal funds to replace buses, there might very well be an incentive to wear out their existing capital equipment. Replacing that equipment with the federal government picking up 75 percent of the cost could be more cost beneficial to the local government than making the very best use of current equipment and structures. While I am familiar with the language in both bills pending before the committee anticipating this problem by requiring maintenance capability, I believe that language will be difficult to implement--especially where there is a capability, but no funding.

In the context of operating assistance, I should add that the administration approach is to withdraw operating assistance first from those cities in greatest reliance, and only later from those cities who could most easily adapt to the loss of federal operating assistance. The proposal to lessen dependence upon operating assistance should be adjusted to a measure of needs and capacity to adjust.

Discretionary Grants

We support making 25 percent of the total UMTA funds available for discretionary grants. Such grants should have a reduced federal match from that available for capital in the flexible formula grant. Cities seeking discretionary funds should reasonably be expected to make a greater commitment. By the same reasoning, however, there should be no limitations

on how such discretionary grants are used. If, indeed, a light rail system or a rail extension meets a metropolitan area's cost-benefit analysis better than a new freeway or a major bus purchase, then a prohibition of such federal assistance has little economic justification.

Formula

NLC supports the creation of a new formula to provide incentives for maintenance, cost control, and productivity. The current section 5 formulas meet none of these goals. Consequently, NLC recommends the adoption of a new formula which includes both a service related factor, a productivity factor, and an incentive for states and cities to contribute to operation costs.

In constructing such a formula, we are cognizant of the complexities. How is one to adjust to an abrupt change in the method of allocation? We are aware that a change to service related factors will have a major impact and, consequently, would hope that such changes could be accomplished through a transition period, both to avoid windfalls and extraordinary reductions. For instance, in all three proposals on public transportation, we have noted that non-rail cities, especially cities between 50 and 200,000, appear to be adversely affected. We would hope that the committee would consider the impact on these systems which were already disproportionately penalized in last year's appropriation.

To begin with, we support section 18 and ask the committee to retain the program. We would caution, however, that the section 18 program will encompass a smaller universe

when the 1980 census data is used. Nearly 120 new urbanized areas will no longer be eligible section 18 areas. We wonder, then, if with reduced funding, it is appropriate to increase funds for that program.

For those urbanized areas between 50 and 200,000, we have a number of concerns. These areas not only took disproportionate appropriations reductions this fiscal year, but had to spread the reduced appropriations across a larger base. Moreover, whereas cities larger than 200,000 have had certainty as to what amounts of UMTA section 5 funds they would be entitled to receive, the urbanized areas under 200,000 have had to deal with an intervening layer of bureaucracy. In view of these factors, and the 11 percent of section 5 which went to these size cities in FY '81, NLC believes that a reasonable proportion of funds should be set aside. Moreover, we would support the inclusion of factors other than population and population density for the apportionment of these funds. While we recognize that these smaller urbanized areas are just beginning to need and develop public transportation services, we believe that performance is a relevant criteria. Otherwise, the distinction on crossing the 200,000 population level becomes very artificial. Moreover, given the discretion under this program which states exercise, we would recommend that the committee consider incentives to make the states more active participants.

For the larger urbanized areas, NLC supports a formula which adds service, productivity, and local contribution as factors. We know that in FY '81, bus cities received 84

percent of section 5 assistance, whereas rail cities have traditionally received a small share of section 5 assistance but a relatively large share of section 3 discretionary funds. Given the relatively small number of rail cities and the administration's efforts to make that an exclusive club, we would hope the committee would carefully balance both bus and rail needs. We suggest the inclusion of service factors in the formula for both bus and rail systems. While population and population density are indices of public transportation need, they are not reflective of the costs and service actually provided.

Productivity: State/Local

Last year, NLC determined to support the concept of productivity. We believe there should be an incentive for transit to be more cost effective--there is no such incentive now, and, in fact, virtually a disincentive. Such a factor should not be based upon performance improvement--which would benefit the current worst systems--but settle on a cost per passenger basis adjusted for population. We recognize that the larger the service base, the smaller the fixed cost per rider. Better productivity can only benefit future demands on the federal treasury.

Finally, we are pleased that the administration has heeded a concern NLC has addressed to both Secretary Lewis and Administrator Teele: state and local contributions. NLC believes that one factor in the formula should measure the extent of non-federal contributions.

Too many cities have been precluded from making contributions because they do not have a suitable tax mechanism to fund effectively a local transit system. Some are prohibited by state constitutions from raising dedicated revenues. Others

are restricted by state imposed property tax limitations. In still other states, state legislatures have prohibited cities from imposing local earmarked taxes. For these cities, even where there is strong support to provide a local subsidy, they are effectively handcuffed.

One way out has been demonstrated in this metropolitan area. Metro capital grants are encumbered by a requirement upon the recipient jurisdictions of demonstrating sufficient financial resources to operate the system. This provision has successfully encouraged the Commonwealth of Virginia to permit a dedicated tax for operating assistance in northern Virginia--reducing federal operating assistance needs to negligible levels.

The inclusion of non-federal contributions needs to be tempered, however, by two considerations. First, state legislatures have concluded sessions in most states. Until these bodies are able to take action in anticipation of the inclusion of such a factor, it would create a windfall for these cities which are fortunate enough to have local tax powers and supportive state governments. Secondly, we do have some concern that when state financial assistance is included in addition to local, such contributions appear to make no provision for the donor's fiscal capacity. As the committee knows, the current recession has had an uneven impact on states and cities. Any formula based in large part on state and local contributions runs the risk of unduly benefitting the most fiscally well off, while hurting those most disadvantaged by the recession. Thirdly, we are concerned that over-reliance on non-federal revenue factors could create a disincentive to operating efficiency. That is, the larger the operating costs and the non-federal revenues covering those costs, the larger the

federal match.

There are, Mr. Chairman, any number of issues raised by both bills and the draft House legislation which I have not addressed. They are important to cities, and NLC would be pleased to supplement our remarks to the committee in whatever manner is most helpful.

I am grateful for the opportunity to present views and look forward to any questions you might have.

Senator LUGAR. Thank you very much.

Senator D'Amato, do you have questions for these witnesses?

Senator D'AMATO. I would like to commend both the National League of Cities and the Conference of Mayors and Mayor Bricken and Councilwoman Trosch for their statements and for their position.

I might mention, Mr. Chairman, it seems to me that it makes little sense to provide new equipment and the means to purchase that equipment and then bring about a situation that will result in inadequate maintenance levels for that equipment, and so I take heart in the testimony given by both our distinguished panelists in their recognition of this fact. And I would say to Councilwoman Trosch, that we have attempted to provide a means and a vehicle by which additional funding could be made available to those communities that fall within the 50,000 to 200,000 population area by having flexibility so that section 18 funds, if not utilized, can be transferred and we are certainly willing to examine that a little more closely and we did provide \$160 million for the 50,000 to 200,000 population category. You understand in these mixes of formulas and blends there's an attempt to build as broad a base support as possible, we did not want to neglect the nonurban areas in our communities. So this was a very conscious effort to recognize that traditionally they have been, I think, shortchanged.

Senator LUGAR. Thank you very much, Senator.

Ms. Trosch, let me ask this question from the standpoint of the National League of Cities. You have obviously a very complex responsibility in trying to offer testimony in behalf of a variety of constituents. Having done the same thing in your shoes the other way around, I appreciate how delicate that problem is.

Let me just ask this question. With regard to discretionary grants, we've heard testimony from the earlier panel, the executives of the large systems, for a variety of reasons they favored having a 25-percent discretionary grant available to UMTA. In part, the Houston Authority is starting not from scratch, but they have quite a program going and they're eager to see a window of that sort available and others are too.

Now looking at all the constituencies of the National League of Cities, is there a consensus in your steering committee on transportation or others that the cities would be better served by having more money in the hands of the administrative discretion as opposed to more money distributed by formula to the various constituents? Did this come up and was there any conversation about it all?

Ms. TROSCHE. Senator, we will be meeting in Houston, the steering committee, to address these points in detail. They have been addressed in our other meetings, not in details to the proposals on the floor. What we are doing too is trying to find that balance that you have to find with the constituents and we have to find as a national organization, and we do believe that some discretionary fund is important and also that it shouldn't be limited with its uses. When I said at this time 25 percent appears to be a good figure, I said that tentatively and said it that way because in fact that particular amount will be discussed in Houston. As a matter of fact, I fly out this afternoon.

Senator LUGAR. Well, please convey to us, if you will, the discussion that you have there because that would be of considerable importance I think. It's a point I think not of great contention between Senator D'Amato's bill and the administration's bill—one says 10 and the other says 25—and there are a variety of reasons why a larger window is important in some systems and why for others certainly in the formula they're going to get more money becomes more important. But I would appreciate your sophisticated judgments after you have these conversations with your colleagues as to about where they come out, because ultimately the consensus on the floor for this kind of legislation comes from many small cities as well as large cities in this country and I think in the committee a number of large systems represented. On the floor, as you have seen in your efforts to assist us, many smaller cities.

Ms. TROSCHE. We will be glad to share that with you, Mr. Chairman.

Senator LUGAR. Do you have any thoughts about this, Mayor Bricken, on the discretionary fund?

Mr. BRICKEN. The Conference believes that the proposal is a reasonable one. In the past there has been greater discretion but I think the Conference recognizes that in these difficult times we're going to have to change the way we've been doing things and this in the judgment of the Conference represents a reasonable balance.

INCREASING DEPENDENCY ON OUTSIDE RESOURCES

I think I might add, too, that there is a certain philosophical balance that I think you must strike. In our own city, we ask how much you should encourage cities to use their Federal moneys for operating purposes? There is a certain degree of—I think the best way to put it—there's a certain degree of feeling I think in general when you get down to local government—and you've been there—that the property tax, for example, is your tax and you husband it closely, and that Federal moneys are “free money” and tend not to be husbanded as closely. To that extent there has been increasing dependency on the part of local governments to use outside resources for operating purposes. Those resources are not nearly as stable and you get in trouble as a result.

So there's a certain amount of efficiency that can be encouraged by having caps of this type, while at the same time recognizing the need for a discretionary part. The discretion is that you can choose to use it for capital purposes and maintenance purposes or for paying salaries of people who run the system.

Senator LUGAR. I appreciate your testimony, Mayor Bricken. Last year we were wrestling in this same subcommittee with the fact that less money total was being suggested by the administration. Of course, as the reconciliation procedure went forward that constraint became even more fixed. In this regard, was discussion with the Conference and with the League of Cities—and you were most helpful in this respect in saying essentially if we're to have less money, we ought to have more freedom to spend it and operate with the capital. It was an idea that I and others put forward.

Now what if we come to a predicament in which there is even less money still? Because in your testimony both of you recognize

that this is essentially where the administration is headed and, of course, Senator D'Amato in his legislation has suggested we at least sort of hold about where we are now as opposed to having discretion and give some flexibility to the operating of the capital. We may have that option. We may have the option of less money and trying to decide how we make the best of that which of course would dictate maybe more toward a formula of melding.

Where do we come out with regard to the section 13(c) problem? This is the problem, as you know, that gives very considerable weight to labor factors and has led the administration to testify against section 13(c), but in its actual submission to finance the problem in a slightly different way by moving toward the capital side and away from the operating side which doesn't address exactly repeal but does so 90 percent of the way. Both of you have not really hit this head on in your testimony, but would you give some comment at this point?

Ms. TROSCHE. Thank you, Mr. Chairman. We have addressed the concern about section 13(c) in our committee meetings and have heard both sides of the issue, that it is either a real or perceived threat of section 13(c), and what it can do has caused the negotiations with labor contracts for escalating wages for labor, and whether it is real or perceived, the fact of the matter is, I think that it has happened. This is of concern to the League. We do applaud moving to relax—not to do away with section 13(c) because we think the original intent was valid. The movement from the Department of Labor to the Department of Transportation for enforcement is a good first step and we have in our policy recommended that, and other steps, that will help reduce that regulatory burden and yet keep the protections that are necessary and which we do support.

Senator LUGAR. Mayor Bricken.

Mr. BRICKEN. In reacting I think to the aspect that there's some amount of inordinate leverage applied to the negotiating processes and labor contracts as a result of these provisions is, I think, frankly a failure to ever have served in local government. We have in our city and, I think, most mayors will say that we have large numbers of employees who are not provided money through any Federal subsidy, for example, police and fire services. I can tell you that those people are just as tough and just as difficult and win bigger labor contract settlements than do transit workers. It has really little to do with that factor. It seems to me you're making much ado about really very little when it comes down to the real life of negotiating labor contracts in cities. And I think while certainly incentives to improve efficiency and all that are in all of our minds today, I don't think that one should focus on that one point of view nor do I think the conference feels that way either.

Again, I reiterate, when you're sitting on a police negotiation and particularly in the western part of the United States, which are not heavily unionized to begin with, I can tell you they're tough and they're not getting any Federal money. They're not waving anything in front of us that even remotely connects to that issue.

I can even say that where we have got a strong labor union in these services, you find it as well. So there are so many variables

that play on this particular issue that, I think, is probably just a failure to recognize what really goes on at the local level.

I want to make a comment about the reduced funding thing, too. We can expect in these days that that's a real possibility. I think, generally, most local officials feel that as the funding levels decrease, the amount of regulation should proportionately decrease and the amount of discretion should be allowed to increase within some general framework, philosophical frameworks. We need less of the so-called fine tuning from Washington and a little more policy direction. Leave that fine tuning and those nuts and bolts things to the people that are closest to making those decisions.

TAXPAYERS MONEYS AND GENEROUS LABOR SETTLEMENTS

Senator LUGAR. May I ask both of you—I know Councilwoman Trosch is going to a meeting today with colleagues and you both may be in touch with colleagues—but the argument that is made—and we had witnesses on both sides of this issue at our last hearing—is that the amounts of moneys that are provided by the taxpayers generally in this country ought not to be used to fund generous labor settlements at the local level, and to the extent there is greater generosity by the Federal taxpayers, the argument has been that there's more latitude for the local negotiator to escalate wages.

As the mayor pointed out, this may or may not be valid in relation to other public employees. It may not be valid at all. The GAO had some testimony after interviewing 12 systems, admittedly scratching the surface of the total number of systems in the country, that some settlements or some working relationships might have been influenced by the availability of Federal money and the section 13(c) procedures.

Is there any potential tradeoff as the cities and as systems look at this between repeal of section 13(c) or, certainly, a lessening of its provisions, and operating funds? In other words, if there are to be operating funds available in the administration's view, then the funds ought not to be used to fund generous labor settlements in a locality at the expense of taxpayers generally throughout the country. I don't know that the administration will ultimately come down in that respect, but I share with you candidly today that this is at least one area which some of us are attempting to explore in trying to find bridges between the proposals that have been made by the distinguished Senator from New York and the administration. And the extent you can share with us any viewpoints of your colleagues, we would appreciate it.

Ms. TROSC. Mr. Chairman, I would like to make a comment. Very often people do say that because they're Federal moneys that we become a little lax in settlements or whatever, but on the local front, I think, in North Carolina you cannot, without special referendum, support transit by the property tax, so these moneys come from other sources which are very limited. We are supporting an operating deficit at a \$3.1-million level to a Federal \$1.6. So we have as much at stake in those settlements with our local dollars, and, I think we, therefore, act prudently.

In my opinion, it is sometimes more the perception of what can happen. We've had moneys held up over a dispute and it can delay our purchases to get through that redtape but it's a delicate balance of what it is intended to do, which I think is valid.

Senator LUGAR. Senator D'Amato, do you have further questions of this panel?

Senator D'AMATO. No, I don't, Mr. Chairman. I'd simply like to reiterate, I believe both the councilwoman and the mayor have made very valid points, and I just wish we would stop this rhetoric about how we have just poured Federal moneys into poor labor/management settlements. Federal dollars have not lead to those settlements, but rather other factors have. I believe, that perhaps people in the ivory tower have convinced themselves that Federal mass transit funding has resulted in inefficiency and waste. However, upon closer scrutiny this proposition proves untrue. I thank the chairman for giving us the opportunity of hearing my former colleagues. I don't want to go back to those days, but I remember those battles well.

Mr. BRICKEN. I might comment, Senator, that it's always healthy to look back and see what may have taken place and try and guard against bad management practices, but, I think, we have to look forward and see what we're facing. In today's world at the local government level all negotiations are conducted, I think, across this country in a much different environment than they may have 5 years ago. To that extent, I think you find universally in the conference, and I'm sure in the national league, that the councils and mayors across this country have, comparatively speaking, become exceptionally conservative in labor negotiations. As someone remarked the other day, in cities any more there's no more liberal labor negotiations. So, I think you have to look at the condition you're looking at today and the one you're looking at in the future.

Senator LUGAR. Thank you very much for coming this morning. We appreciate your testimony.

The Chair would like to call now the final panel of the morning: Kathy Hoffman, representing the National Association of Counties; Marie Travesky, vice president, Metropolitan Washington Council of Governments, and a member of the Fairfax County Board of Supervisors, representing the National Association of Regional Councils; Warren Frank, executive director of the New York Regional Transportation Authority; and Earle Putnam, general counsel of the Amalgamated Transit Union.

Ladies and gentlemen, we welcome you and we appreciate your patience and waiting for this moment in the hearings. We look forward to hearing your testimony. I asked in the original panel situation that members try to summarize their remarks in 10 minutes time. All of your statements will be published in the record in full and to the extent that you are able to confine your remarks to 10 minutes then we will proceed into questioning and have a dialog among us.

I would like for you to testify in the order that I introduced you and that would mean first of all Ms. Hoffman.

STATEMENT OF KATHLEEN HOFFMAN, ON BEHALF OF HENRY MAYER, MANAGING DIRECTOR, MILWAUKEE COUNTY TRANSIT, REPRESENTING NATIONAL ASSOCIATION OF COUNTIES

Ms. HOFFMAN. Thank you, Mr. Chairman. I'm sorry that we don't have Henry Mayer here this morning. His plane was delayed. Due to airline deregulation, the air service from Milwaukee is very limited and we are sorry that he's not here. As you know, I'm the legislative representative for transportation for NACO and I'm representing the views of the National Association of Counties this morning.

[Complete statement of Mr. Mayer follows:]

STATEMENT OF HENRY MAYER, MANAGING DIRECTOR, MILWAUKEE COUNTY TRANSIT SYSTEM ON BEHALF OF THE NATIONAL ASSOCIATION OF COUNTIES

Good morning, Mr. Chairman, I am Henry Mayer, managing director of the Milwaukee County Transit System (MCTS). Today I represent the views of the National Association of Counties (NACO)¹ regarding S. 2367, the Transit Assistance Act of 1982, and S. 2377, the Mass Transportation Act of 1982. Mr. Chairman, we sometimes tend to think of county government as a part of rural America, and often this is true. But many of our counties also deal with urban problems, and often these urban counties have all of the powers, responsibilities and problems of large cities. Over the past decade, many suburban and urban counties have become providers of public transportation services. A number of these urban counties, such as my own, directly own and operate metropolitan transit authorities.

Since 1975 when Milwaukee county took over the transit system, I have worked to maintain its efficiency and effectiveness. For example, we donate more of our expense dollars to actual on-street service (68 cents) and less to administration (10 cents) than nearly any other major transit system. Bus service is also within walking distance of 90 percent of Milwaukee county's population with riding levels the highest per capita among U.S. all-bus transit systems.

Today I remain personally committed to providing mass transit in the most cost-effective ways possible and I am still convinced that this approach is essential to the survival of public transit in America.

The National Association of Counties shares with me this same commitment to effective and efficient public transportation. With this perspective in mind we will comment on the provisions of S. 2367 and S. 2377 since we regard both as sincere attempts to improve an extremely complicated but vital program.

I. CAPITAL ASSISTANCE

NACO regards as essential a discretionary program large enough to accommodate the growing rehabilitation needs of existing systems and the development of cost-effective new rail starts. A discretionary program encompassing 24 to 25 percent of total funding is needed to respond to the capital needs of a national transit constituency. While NACO acknowledges priority should be given to maintaining existing transit system, we also insist that local governments be permitted the flexibility to use their capital grant funds for projects consistent with locally determined needs and objectives including cost-effective new rail starts. NACO emphasizes the phrase cost-effective since we support projects only in areas where there is sufficient local and/or State financial support and ridership potential to justify a new start. The total elimination of funding for new start preliminary engineering and planning needlessly penalizes the growing areas of the country where dramatic increases in transit ridership and productivity are possible. It also deprives transit of a national constituency and base of support.

As you know, Mr. Chairman, deferred capital needs in existing bus and rail systems are so great that Secretary Lewis himself has advocated donating 1 cent of a 5 cent motor fuel tax increase to transit because 1982 funding levels are inadequate to

¹ The National Association of Counties is the only national organization representing county government in the United States. Through its membership, urban, suburban and rural counties join together to build effective, responsive county government. The goals of the organization are: To improve county governments; to serve as the national spokesman for county governments; to act as a liaison between the Nation's counties and other levels of government; and, to achieve public understanding of the role of counties in the Federal system.

deal with this problem alone. Therefore, a discretionary pot of at least the size proposed in S. 2377 is needed, Mr. Chairman. NACO, therefore, endorses the approach to the discretionary program taken in the Mass Transportation Act of 1982 which sets aside approximately 24½ percent of total transit funds for discretionary projects.

NACO also prefers Senator D'Amato's approach to lowering the Federal share for discretionary projects to 70 percent. This will require greater local and State financial commitment to projects but not preclude their initiation by all but the wealthiest applicants as the administration's 50 percent share would do. This should result in more cost effective projects being proposed for Federal funding but not completely stymie sincere efforts to build local financial and political support for transit.

In last year's testimony we questioned the maintenance provisions which again appear in S. 2377 and S. 2367, requiring recipients of capital grants "... to have the technical and financial capability to maintain facilities and equipment purchased with Federal funds." While NACO strongly supports adequate maintenance of transit facilities and equipment, we still question how a recipient's ability to maintain facilities and equipment will be determined. No guidelines or criteria are given. We think they should be clearly defined to prevent confusion and possible inequities. We hope the committee will consider this in its final transit legislation.

II. THE FORMULA GRANT PROGRAM

We appreciate the administration's statements in support of a flexible, blockgrant approach to transit funding. Unfortunately, the blockgrant proposed in S. 2367 is not sufficiently flexible to accommodate the use of Federal funds for operating assistance. NACO agrees with Senator D'Amato that "some form of operating assistance is essential to the survival of most transit systems, particularly the smaller ones." We ask that our testimony of last year to the House Budget Committee documenting the need for operating assistance by the majority of county transit systems be resubmitted for the record, Mr. Chairman. Therefore, NACO continues to support a Federal operating assistance program though we also support its restructuring and a reduction in the level of its Federal support. NACO further endorses an approach to operating assistance which reflects the level of transit service and rewards truly productive and efficient systems. Basing operating assistance on expenses rather than deficits is also supported by NACO since this approach will not act as a disincentive for lowering transit deficits.

The Mass Transportation Act of 1982, S. 2377, comes closest to this approach. Its allocation formulas for areas above and below 200,000 contain service factors which would target funds to areas providing greater transit service. Some modification of the formulas will be necessary to ease the transition, particularly for areas below 200,000, with less service but the overall approach taken by Senator D'Amato is welcomed by NACO. It is definitely preferable to basing Federal assistance on a recipient's share of national non-Federal mass transportation revenues. This approach does not reward efficient transit systems, only extremely costly ones. There is no incentive to cut local costs because the higher they are the more Federal assistance will be available. Therefore, NACO supports a blockgrant approach with true flexibility to use funds for capital or operating costs such as S. 2377 permits. We also support allocation formulas which reward greater transit service and efficiency.

Caps on operating assistance are also necessary in NACO's view. Limiting the amount of Federal money which can be spent for operating assistance to 50 percent of an area's total blockgrant as S. 2377 proposes is certainly within reason. A gradual reduction to a lower percentage may also be necessary to keep down Federal expenditures. However, limiting the amount of operating assistance to the amount obligated solely in fiscal year 1982 is not appropriate since some transit systems may have had extraordinarily low obligation levels due to cuts in the 1982 budget and many new urbanized areas could be totally precluded from using their blockgrant funds for operating assistance. A better and more equitable approach would be to take the average of the last 3 years operating assistance obligations for devising a cap. In any case, NACO endorses capping operating assistance and appreciates Senator D'Amato's attempt to do this.

The suggested 80/20 match for capital and 50/50 match for operating in S. 2377 is another effective way to encourage the use of Federal funds for capital rather than operating costs. This is a much more reasoned and constructive way to deal with escalating subsidies than the meat-ax of a total cutoff by fiscal year 1985.

III. SMALL URBAN AND RURAL TRANSPORTATION, SECTION 18

As you know, Mr. Chairman, NACO has had a long time commitment to representing and responding to the needs of rural Americans. As an organization we remain faithful to this commitment and are unwilling to give up on the important rural transportation initiative contained in section 18. NACO, therefore, urges the committee to reauthorize a rural public transportation program which permits full flexibility in the use of section 18 funds for capital or operating expenses. Without this flexibility, in the face of declining federal dollars, most section 18 programs will die.

Flexibility in the use of sharply decreased funds is imperative rather than rigid. Federal dictates, that rural public transportation operators can not use section 18 funds for operating assistance. The operators and the local governments which support them certainly know better what their needs are. Let them make flexible and creative use of declining Federal dollars, they can determine whether the best use is the purchase of another vehicle or to meet the costs of serving widespread, rural riders. Therefore, NACO will not support total elimination operating assistance for section 18.

In order to enhance the use of section 18 funds by States which have not been effective advocates for the program, NACO suggests shortening the time section 18 funds may be retained to 2 years. Funds not used within this time should be returned to the Secretary of Transportation for reallocation to States which have used up their section 18 allotment.

We also urge the committee to consider the creation of a council of local rural officials in each State to insure local government input into the funding criteria and allocation methods developed by States for the section 18 program. State Associations of Counties and State Municipal Leagues could present the Governor with a list of county and city representatives who would be productive members of such a council. NACO will be happy to work with the committee to devise such a mechanism. We feel it will enhance the effectiveness and outreach of this important program.

IV. TRANSFER PROVISIONS AND OVERALL FUNDING DISTRIBUTION

NACO would prefer no transfer of funds between the section 18 program and areas above 50,000. However, should such provisions be retained transfers of funds from section 18 program or from areas below 200,000 should only be effected with the concurrence of affected local officials just as they are for areas above 200,000.

A better way to allocate limited funds is to tailor the initial distribution of funds as closely as possible to current population groupings. The distribution of funds in S. 2377 ignores the population changes in the areas above 50,000 revealed by the 1980 census. Clearly, a somewhat larger percentage of blockgrant funds than 5 percent is needed for areas between 50,000 and 200,000 which showed the largest increase. In addition, the 65/35 split between bus and rail funding in the blockgrant formula for areas above 200,000 needs reexamination. The majority of transit systems throughout the country are based on bus transportation. Therefore, a lesser proportion of the formula should be dedicated to rail. A factor in the neighborhood of 20-25 percent seems sufficient.

V. OTHER PROVISIONS

NACO commends the administration for its changes in Federal procurement factors. The benchmark price approach should be a much more effective way to insure that transit systems get the kinds of equipment they need and can afford. NACO also commends the administration for its attempt to deal with section 13(c) as well as its significant reduction in Federal program requirements and certification. In terms of the planning provisions, we question the need to redesignate recipients of planning funds as has been proposed in both bills. Current designated recipients should continue to exercise those planning functions unless there is a consensus among the affected local governments of the need for redesignation.

Thank you, Mr. Chairman, for the opportunity to express NACO's views on the Transit Assistance Act and the Mass Transportation Act of 1982. We hope our comments will be helpful to the committee in developing its final transit reauthorization legislation. We are ready to assist you in any way possible to improve this vitally needed public transportation program.

STATEMENT OF THE NATIONAL ASSOCIATION OF COUNTIES TO THE TASK FORCE ON TRANSPORTATION, RESEARCH AND DEVELOPMENT, AND CAPITAL RESOURCES CONCERNING MASS TRANSPORTATION INFRASTRUCTURE DEVELOPMENT

The National Association of Counties (NACO) appreciates the opportunity to present its assessment of the impact of a proposed phase out of Federal operating assistance on the public transportation infrastructure of the Nation's counties.

The first section of our testimony will include a brief summary of the results of a recent study funded by the Urban Mass Transportation Administration (UMTA) and conducted by NACO on The Transit Financing Agenda for the 1980's: Status Report and Views of the Nation's Chief County Elected Officials. The study was conducted in cooperation with the U.S. Conference of Mayors whose companion report surveyed the same issues from the point of view of the Nation's Mayors. The second part of our testimony will describe the views and concerns of county transit officials regarding the probable effects on their systems of a phase out of the Section 5 operating assistance program as proposed by the Administration.

I. TRANSIT FINANCING AGENDA FOR THE 1980's—STUDY RESULTS

The purpose of the study was to recommend ways to close the transit deficit gap through identifying viable, politically acceptable sources of funding. The development of stable, local revenue sources was a major priority as well as making better use of assistance from the federal and state levels.

Forty out of the seventy counties identified nationwide as operators or contributors to general purpose transit systems were surveyed. The views of the chief elected officials were solicited as well as detailed information from county staff directly involved in transit. The responses of chief elected officials served as the study's focal point since they would have to make the difficult political and financial decisions necessary to closing the transit deficit gap.

1. Current Level of Local Transit Support

Seventy-seven percent of the counties surveyed contribute some local funds to general purpose transit. Earmarked taxes for transit existed in over half of the counties (16 out of 31) responding to the survey. Of these counties most had populations of over 750,000. Eighty percent of these earmarked taxes were used for both operating and capital expenses.

2. Fare Policies and Pricing

Out of 30 transit systems surveyed nearly 75 percent have instituted fare increases in the last 2 years (1979-1980). Over $\frac{2}{3}$ of the systems recover at least 30 percent of their operating costs from fares. For 22 percent of the 31 systems the farebox share of operating costs is 30 to 40 percent. For 29 percent it covers 40 percent to 50 percent of the costs and for 16 percent the farebox accounts for more than 50 percent of the operating costs of transit.

A major difficulty with fares was the use of flat fares in the majority of systems with no reflection of 2 key cost factors—distance and peaking.

3. Agenda for the Future

In terms of future farebox attitudes almost 76 percent of the counties reporting felt that transit agencies should establish a minimum share of costs to be covered by the farebox. The desired minimum was 42 percent with the actual minimum at 38 percent, not far off. Twenty-three out of 30 counties ranked increased funding for improved service levels or route extensions as one of the three top future issues. Fourteen counties acknowledged the need for improved management to hold down costs. Eleven ranked increased revenues financed by fares or local taxes as the number one issue for the future.

II. COUNTY TRANSIT OFFICIALS' VIEWS OF THE IMPACT OF ELIMINATION OF FEDERAL OPERATING ASSISTANCE ON THEIR SYSTEMS

These views are based on the responses of county officials in six counties operating or contributing to general purpose transit throughout the nation. The counties interviewed include Somerset County, New Jersey, Santa Clara and Fresno Counties in California; Milwaukee County, Wisconsin; Allegheny County, Pennsylvania and St. Louis County, Missouri. The systems range from primarily commuter rail service in New Jersey to urban mass transit in Wisconsin. The issues discussed include current fare levels and the size of increases that a phase out of federal operating support will entail. Impact on ridership and the potential for increasing local and state support to compensate for the loss of federal assistance will be discussed. Finally,

some comments on the overall impact on the levels and quality of transit service will be included.

1. Fare Impacts—Current Level and the Size of Increases Needed

Three commuter rail lines operate within Somerset County, New Jersey, at fares ranging from \$40 to \$120 per month for commuter and off peak service. Fares were raised 15 percent last year by New Jersey Transit, a state agency which assists the county in supporting public transportation. Two additional fare increases are already planned to take effect by next January to enable the state and local governments to keep up with escalating deficits. Increases in addition to these, would be difficult to institute without devastating effects.

Santa Clara County, California currently charges regular fares of 35¢ for adults, 10¢ for children under 17 and riders over 62. Express fares range from 75¢ for adults to 50¢ for elderly and handicapped. The last fare increase was instituted in July of 1980. If federal operating monies were eliminated, Santa Clara would have to double fares or cut service if additional state aid were not available.

Milwaukee County transit fares were raised last January to 65¢. A county official interviewed was unable to predict precisely the amount of fare increases needed but indicated that additional property taxes would also be needed to compensate for lost federal assistance.

Fresno County's current fare of 35¢ was raised in June of 1980 and hearings are being held to plan for another increase. By California state law, the county must meet 20 percent of the deficit so that fares would have to be increased substantially if federal assistance were terminated.

St. Louis County would lose \$3 million in 1982 if federal operating monies were cut off. Its current commuter fares of 50¢ to 75¢ would have to rise to as high as \$1.50 to meet additional expenses without federal support.

Allegheny County Port Authority, currently charging 75¢ for rides, increased fares twice in 1980 with a 9 percent loss in ridership after its latest increase in November 1980 without federal assistance fares would have to be \$1.50 by 1985 and lay offs of 495 people would be necessary. These include administrative as well as operating staff.

2. Ridership Impacts

County sources indicated that estimates were difficult but did make projections based on past experiences with substantial fare increases.

Somerset County Transportation Coordinator, Arthur Ruben stated that New Jersey Transit estimated a 25 percent decrease in transit ridership was possible.

Though both Santa Clara and Milwaukee Counties reported no losses in ridership due to their last fare increases, Santa Clara sources indicated that large rises could result in substantial ridership losses. Ron Waterman of Milwaukee County stated that ridership loss in his area would be linked to gasoline price increases.

Fresno and St. Louis Counties both projected a permanent loss of ridership would result from the size of fare increases necessary to compensate for lost federal operating assistance.

Allegheny County was definite in predicting ridership losses since its system has already experienced a 9 percent loss after last winter's 15¢ fare increase.

3. Other Revenue Sources

These comments describe county officials' perceptions of whether the localities and states will be able to generate enough new revenues to make up for lost federal assistance.

Prospects do not look good in Somerset County, New Jersey Transportation Coordinator, Arthur Ruben believes the county would have to terminate a Section 18 program in rural sections since the Administration's budget calls for elimination of Section 18 operating subsidies in 1982 as well as their phase out under Section 5 by 1985. Under New Jersey law the county can only expend up to 5 percent more than last year's budget on operating expenses. Even though the county is considering charging fares to elderly and handicapped riders of a county funded specialized transportation service. This will not be enough to make up for lost federal funds and stay below the cap. The impact of charging a fare will be lessened by the added expense of buying and installing fareboxes on the small vehicles used by the service. There is also an additional problem. Regulations imposed by the human service agencies which assist the county in paying for the service currently prohibit charging their clients fares. These institutional barriers will have to be removed first before fares can be charged.

"Without additional revenues overburdened states like New Jersey won't be able to make ends meet," according to Mr. Ruben. Although the State Department of

Transportation has proposed a gas tax increase, he believes it is unlikely this year due to upcoming elections. Finally, the cut off of federal operating funds will cripple not only New Jersey's rail system but erode political support for the statewide bus transit system within the state legislature.

In California Santa Clara and Fresno Counties ability to raise local taxes is hamstrung by state law requiring a $\frac{2}{3}$ vote of both houses of the legislature to increase taxes. A more likely potential source of operating assistance is the state. A bill introduced into the Assembly would raise state gas taxes and increase the funds available for transportation. Passage of this may also be difficult.

In Milwaukee County an increase in property taxes will be necessary. This will cause a tremendous crunch for tax payers faced with funding not only transit but major sewage problems and possibly medicaid increases from the same tax source. Furthermore, current property taxes are high and the county share of transit expenses has risen steadily from \$2.39 million in 1979 to \$11 million this year.

The state of Wisconsin's share of transit costs is already generous and escalating. In 1979, the state contributed \$5.8 million. In 1980 it increased to \$11.1 million and in 1981 the state share will be \$14.2 million of Milwaukee County's transit costs. "How much more can the state provide," Ron Waterman of the county's Intergovernmental Relations office wonders. In contrast, the federal share though significant at 27 percent of Milwaukee's transit expenses, is less than the local or state shares at 33 percent and 40 percent respectively.

In Allegheny County the local property tax cannot be raised until a state cap on millage is removed through legislation. Furthermore, the size of the state's contribution to the county's transit budget is pegged to continued federal as well as local assistance. A termination of federal assistance would result in a reduction of the states 3 to 1 match with local dollars for Allegheny County's Transit System.

St. Louis County is in even worse shape. It must raise all transit revenues from its half cent share of the sales tax. According to county sources, the state can offer no further assistance until it deals with its own financial emergency, impending bankruptcy.

4. Overall Impact of the Loss of Federal Operating Assistance on County Transit Systems.

An Allegheny County transit official predicted a loss of federal assistance would lead to a 15 percent cutback in service as well as the massive personnel layoffs mentioned earlier and fares rising to \$1.50 by 1985.

Sources in Fresno and St. Louis Counties stated definitely that great reductions in service would result from phasing out federal subsidies. Some lines would be completely lost.

Santa Clara County sources predicted a cut in service and a decrease in the rate of expansion of a public transportation system growing to meet the county's increasing population and ridership.

Arthur Ruben of Somerset County summed up the proposed phase out's impact this way, "If you wipe out Section 5 and Section 18 subsidies, you are wiping out public transportation in this county." He also raised the issue of whether the question of a national responsibility for the rail passenger system of this country should not be raised before cuts of this kind are implemented.

The National Association of Counties Transportation Steering Committee, which sets policy on national transportation issues, agrees with Arthur Ruben that there is a national responsibility to maintain viable and effectively functioning mass transit and rail passenger and freight services in this country. A copy of resolutions on the Administration's transportation budget cuts adopted by the committee is enclosed for your information.

NACO appreciates this opportunity to share with the committee the views and concerns of its members regarding the effects of proposed federal operating assistance cut backs on county transit systems throughout the country.

Senator LUGAR. Thank you very much, Ms. Hoffman.
Ms. Travesky, would you please testify.

STATEMENT OF MARIE TRAVESKY, VICE PRESIDENT, METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS, MEMBER, FAIRFAX COUNTY BOARD OF SUPERVISORS, REPRESENTING NATIONAL ASSOCIATION OF REGIONAL COUNCILS

[Complete statement follows:]



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RICHARD C. HARTMAN, Executive Director

TESTIMONY
OF
MARIE B. TRAVESKY

Member, Fairfax County, Va. Board of Supervisors;
Vice President, Washington Metropolitan Council of Governments

ON BEHALF OF THE
NATIONAL ASSOCIATION OF REGIONAL COUNCILS

Mr. Chairman, members of the Subcommittee, I am Marie Travesky, a member of the Fairfax County Board of Supervisors and Vice President of the Washington Metropolitan Council of Governments. I also serve as an alternate on this area's transit authority. I am here to testify on behalf of the National Association of Regional Councils.

Regional councils for the most part are substate districts of general purpose local governments which encompass a total regional community. Approximately 160 metropolitan regional councils with SMSA's of 50,000 or more in population are designated as Metropolitan Planning Organizations. As MPOs, they are public agencies responsible for urban transportation planning of mass transit, highways and airport systems.

I am pleased to have the opportunity to testify on the reauthorization of mass transit programs and in particular the two bills before your Subcommittee, S.2367 and S. 2377.

Mass transit is critical in many areas and has had a positive effect on the way we live. It has made us less dependent on our cars and thus less dependent on foreign oil; it has attracted and retained businesses to locate within an urban center; and it has been, for many people, the sole means for transportation for employment, schooling and other necessary activities. A continued Federal role in support of public transportation is necessary as a component of this nation's economic vitality.

One of the most pressing problems facing our transit systems today is having the revenues to provide adequate public transit services. Many transit systems have significantly raised fares and cut services but still cannot curb growing deficits. Thus, it becomes imperative that the Federal government continue its formidable role in supporting mass transportation during this period of high costs and diminishing local and state resources.

For these reasons, Mr. Chairman, NARC has been a strong supporter of Transportation Secretary Drew Lewis' proposal for a 5-cent increase in gasoline user fees with a penny earmarked for mass transit. This additional revenue source which must be dedicated to highway and transit needs is crucial in order to maintain and improve our highway and transit systems. If the President does propose a 5-cent increase in gasoline user fees with one cent allocated for transit, we would hope the Committee would support this proposal and adjust the authorization levels accordingly in its legislation.

OPERATING ASSISTANCE

The Administration in its bill, S.2367, has a \$2.6 billion level of funding in fy '83 for capital and operating expenses and calls for phase out and elimination of operating subsidies by 1985. While we understand the

Administration's philosophy that operating assistance should be the responsibility of transit users and local government, we are concerned about the effect this action will have on the future of mass transit. In many instances, ridership will decline, services will be reduced, fares will increase and people will revert back to their automobiles. Insofar as local governments raising more taxes for transit purposes, many jurisdictions have been limited in their ability to raise revenue especially from real property levies, due to such measures as Propositions 13 and 2½.

Thus, we support Senator D'Amato's bill, S. 2377, in this regard which would continue the eligibility of allowing up to 50% of an apportionment to to be used for operating expenses and assures a 10 percent increase per year for mass transit programs over the next four years. A 50/50 match for operating and a 80/20 match for capital as provided in S.2377 would encourage the utilization of capital funds.

FORMULA BLOCK GRANT APPROACH TO MASS TRANSIT

Few can argue against the need for more flexibility at the local level on the spending of transit funds tailored to local needs. A block grant for both capital and operating assistance as provided in S.2367 and S. 2377 would serve this purpose. However, as in most new approaches, there are some problems in relation to the actual implementation of the block grant which we would like to bring to this Subcommittee's attention.

NEW FORMULA FACTORS

Both bills change the formula grant allocation for designated recipients. We realize that a new formula needs to be worked out to better reflect the

various needs of communities across the country. However, we are concerned that the significant changes in the formula factors in S. 2367 and S. 2377 will adversely impact many urbanized areas as early as fiscal 1983.

The Administration's "revenue match" formula which has never been used before, would put exclusive weight on an area's capacity to secure adequate non-Federal mass transportation revenues. It would unfairly penalize those localities that do not have such capacity at this time.

On the other hand, S.2377, would give great weight to a revenue vehicle mile factor based on the assumption that those urbanized areas which have the most efficient systems will get a larger share of the formula grant. We support the concept of rewarding efficient systems. However, this factor should not be given too much weight in allocating the funds. Many areas because of lower density development patterns cannot use transit as efficiently as ones with high density.

Thus, while these bills contain factors which should be considered in determining a distribution formula, we would hope that an equitable balance will be worked out within the Subcommittee. We also would urge the Subcommittee to phase in a new formula to give communities a period of adjustment.

NEW RAIL STARTS

We support the direction of the bills which encourage rehabilitation and reconstruction of transit systems to extend the service life of transit vehicles. However, we would oppose the Administration's attempt to eliminate the eligibility of new rail starts and rail extensions. In fact, according to a federally-sponsored study by the Regional Plan Association

in New York, rapid transit could attract enough patronage in four cities--Los Angeles, Seattle, Honolulu and Houston, to recoup the construction costs from savings in energy, land, labor and travel time alone.

DISCRETIONARY PROGRAMS

In revising the UMTA legislation we believe there should be retention of the discretionary programs with substantial funding. As we have indicated, any formula approach is bound to present funding anomalies. Special circumstances and needs emerge and cannot be adequately responded to without giving the Secretary some funding flexibility. This discretionary program should be retained for this purpose and in our opinion, the funding levels should be in the range of 20-25% of the total UMTA authorized. Thus we would oppose the Administration's 10 percent discretionary program at a greatly reduced 50/50 match.

PLANNING

The planning and programming of mass transit and highway projects in urbanized areas is done through consensus decisionmaking of the state, affected local governments and transit operators through the Metropolitan Planning Organizations (MPOs). This is the only mechanism local elected officials have to jointly work together to decide how transit and highway funds will be used on an annual basis according to local needs. Both S. 2377 and S. 2367 allow 2½ percent of the block grant to be used for planning purposes and would be provided to the designated recipient. In addition, the bills would allow the waiver of all or part of this funding to be used for other purposes in the urbanized area. These provisions concern us.

First of all, we support a percentage of the block grant to be used for planning and technical assistance which would be comparable to the levels of funding presently appreciated. This approach parallels the present allocation of the planning funds in the Federal-Aid Highway program. UMTA now provides planning

funds on a population and needs basis allocated directly to MPOs and States.

We are concerned that under both bills, the planning funds would be apportioned as part of the new formula block grant giving some areas more than twice as much planning funds and others would be cut by two-thirds. We do not think this makes sense since there is no correlation between increased capital expenditures and planning. Thus, we urge that this funding continue to be allocated in its present manner.

Smaller urbanized areas which may receive less federal operating and capital funds under the new formula may need more planning money to increase the effectiveness and efficiency of their transit operations. Keeping the present allocation formula as administered by the Secretary would also eliminate the need for a waiver since funds are distributed in an equitable manner according to population and needs.

Further, the bills would not continue to keep the present Section 8 recipients as such but in effect the recipients of the formula funds would also receive the money allocated for planning. The recipients, therefore, could be the transit operator or a single local government. Moreover, there is no direct pass through requirement to the MPO. While the MPO process would still continue to be required, there would be no assurances that adequate planning funds would go to the MPO. Thus, we urge that the present designated recipient of such funds be continued.

TRANSFERABILITY OF FUNDS

S.2377 would allow the Governor with the approval of affected local governments to transfer an amount of the State's apportionment to rural areas under Section 18 and from Section 18 to the urbanized areas. While

transferability presumably would allow for more flexibility of the allocation of transit funds within a State, it would also defeat the purpose of an allocation formula in the bill for urbanized areas 200,000 or below in population. Under this provision, the State could play a dominating role in urging the local governments to transfer their funds. Thus, we believe that it would be unfair to smaller urbanized areas that must plan and program transit projects based on their projected allocation to have their funds subject to transfer to another area within the State.

SELF-CERTIFICATION

The Administration's emphasis towards more local self-certification for programs could provide greater simplicity and cut needless delays. We would urge that for the planning process local certification be made through the MPO to the Secretary once every two years to certify that the planning process is in accordance with Federal guidelines. This would eliminate the need for an annual review by the Secretary which usually causes lengthy delays in Washington.

Mr. Chairman, I appreciate the opportunity to testify before your Subcommittee today. I would be glad to answer any questions you or any of the Subcommittee members may have.

Senator LUGAR. Thank you very much, Ms. Travesky.
Mr. Frank.

STATEMENT OF WARREN FRANK, EXECUTIVE DIRECTOR, NEW YORK REGIONAL TRANSPORTATION AUTHORITY, SYRACUSE, N.Y.

Mr. FRANK. Thank you, Senator. I want to thank you and Senator D'Amato for giving us the opportunity to be here. I'm not really a person who testifies on a regular basis, but I'm certainly a professional transit person as a senior member of probably one of the best systems in the Nation. I come out of industry, Senator, so that I'm not the typical bureaucrat who comes in and says give us more money so we can spend it, because that's not my philosophy.

I also represent a transit system out of Syracuse in central New York that operates three separate systems, one with a population of 450,000 or so and the other two transit systems with 50,000 or less. That takes us directly into section 18, which is very significant to middle America, people that you represent, people that the Senator represents, people that Senator Heinz represents.

As the regional director of APTA, which I am, I represent the States of Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, and New York, very significant rural and still urban areas that are going to be so tremendously affected by the administration's bill that I must come here and testify on behalf of Senator D'Amato's proposal.

SURVIVAL OF SMALL TRANSIT SYSTEMS

I want to move right to the accuracy of his original statement where on Federal operating subsidies he said they're so essential to the survival of the Nation's small transit systems, especially the smaller ones. I have two systems that we presently operate—we'd be out of business without section 18 funding.

The elimination of Federal operating assistance will virtually force 25 percent of all the Nation's small systems out of business. The demographics, by the way—I think this is important—of our transit riders in the central New York area mirror all the properties in the Nation. Eighty-seven percent of our ridership is comprised of elderly, handicapped, urban, and rural poor. The lower middle class who are wholly dependent on public transportation—they are primarily our riders. Without these people, we wouldn't need a transit system; and without a transit system these people couldn't go to work.

I think it's significant that the economic turndown in business in the central New York area and throughout the Nation has not affected our ridership. I think that's very important and I think it's significant with Mr. Putnam sitting next to me—and I wasn't aware that he would be—that I'm able to make the statement that we have a 3-year labor contract. We've been able to put into our labor contract what we call part-time employees that has allowed us to give significant increases to our regular employees and still hold our labor costs at minimal increases.

Let's talk about section 18 and New York State and I can give you statistics about New York State—and, once again I think you'll find it representative of your State and many other States through-

out the Nation—there are 56 public transit systems receiving section 18 funds now in New York State. Nineteen are private bus companies, 14 are small city transit systems, and 23 are county or rural systems. The systems we operate in Syracuse have specialized services for the senior citizens and the handicapped that include curb-to-curb service. We also have what we call a Country Shuttle Service which goes into the suburban and rural areas. We've combined all of these for what we call our Coordinated Transportation Services: it addresses the rural, the handicapped, and the senior citizens.

If we eliminate operating assistance, which would be eliminated with the administration's bill, it would be critical and almost impossible for these transit systems to continue. It's catastrophic in some cases where it come to the truly rural poor and the rural handicapped.

There's uncertainty of continued operating assistance—not certain—which is absolute with the administration's bill. Senator D'Aмато's bill—which we certainly support—would give us a cap on operating assistance but it allows us to continue in operation in these areas that are so essential.

Section 18 has become the only reliable source for capital funding. This includes the replacement of critically needed vehicles and equipment in the rural and small urban areas. Loss of this funding would destroy the ability of systems to provide adequate and safe service. Any proposal which would continue to fund capital assistance only will do little good if the system cannot afford to operate and maintain its equipment. These statements are all self-evident to me at least.

Due to the cutbacks in other Federal programs which funded specialized transportation services, section 18 is the resource for those services, particularly with reference to the elderly, the handicapped, and the rural poor. Section 18 is the catalyst for consolidating all specialized services efficiently, effectively, and with fiscal prudence. Prudence is essential to operate any business or any transit system in America.

These would be severely impeded, obviously, by the curtailing of an operating assistance provision which is part of the administration's bill.

I'd like to just mention that I have been, in my terms, "on the road" since Sunday night. I've been in Albany for 2 days. We had breakfast at 7:30 with the leadership in Albany on Monday and again on Tuesday at 7:30 with members of both parties of the New York State Assembly and the Senate. We presented them with the statistics on every transit system in New York State.

FORCED TO DOUBLE FARES

Factually, if the operating assistance bill is discontinued, we will be forced, every one of us, to at least double our fares between now and fiscal 1985. That, I think, is very significant. I do want to make two major points. There is a range of from 44 percent of the cost of providing transit services generated from the fare box in one system to a high of 59 or 60 percent. None of it is bad. It's all right

to be in the 50 percent area, which we think is essential to a viable and prudent transit operation.

I'd like to close with just one last statement. I support Senator D'Amato's bill which gives transit properties an opportunity to at least maintain the present level of service for middle America. I think of myself as a member of that middle America and as a businessman when I say that it would be destructive for the tax base and the people who really need mass transportation services to have these systems curtailed, phased out or cease operating immediately and entirely. Thank you.

[Complete statement follows.]

CENTRAL NEW YORK

REGIONAL TRANSPORTATION AUTHORITY

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WARREN H. FRANK
 EXECUTIVE DIRECTOR
 CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY
 SYRACUSE, NEW YORK

1. Director of Region I APTA-member properties
 States of Maine, Vermont, New Hampshire, Massachusetts,
 Connecticut, Rhode Island, New York.
2. Executive Vice President (former) of APTA Marketing Committee.
3. Founder of All-Authorities of Upstate N. Y. public
transportation properties.
4. Consortium member, N. Y. S. transit properties.
5. Received U. M. T. A. Award for "Superior Achievement
in Transit Marketing."
6. Chairman of Faculty Advisory Board, Northeastern University
Center for Continuing Education (Boston, MA).
7. Named "Outstanding Contributor" to Transit Industry
Continuing Education, Academic Year 1981-82 by faculty
at Center for Continuing Education, Northeastern University.
8. Member of Transit Research Board, National Academy of Sciences.

Warren H. Frank
 Executive Director

Authority
 Rudolf A. Norman, Chairman
 Royal L. O'Day, Vice Chairman
 Robert M. Gilchrist, Secretary
 Harold E. Orchard, Assistant Secretary
 Jean P. Anderson
 Roy T. Chosko
 Richard D. Grossman
 Warren H. Frank
 Vincent A. O'Neill
 Mitchell Shulman

CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY

ITEMS TO INCLUDE DURING SENATE SUBCOMMITTEE TESTIMONY:

1. Senator D'Amato was 100% accurate in stating "Federal operating subsidies are essential to the survival of the nation's mass transit systems, especially the smaller ones."
2. Elimination of federal operating assistance will force virtually 25% of nation's transit systems to cease all operation.
3. Demographics of Centro's transit riders mirrors that of all properties in nation: 87% of our ridership is comprised of elderly, handicapped, urban & rural poor, and the lower middle class who are wholly dependent on public transportation.
4. Amidst an economic downturn in business and industry, we have held and increased our ridership. Labor costs are holding steady, not experiencing increases.
5. See Russ's fiscal comparison of Administration & D'Amato bills.

WITH RESPECT TO SECTION 18 FUNDING: (Source: Jere Fidler, Head of Specialized Transit Section, NYS DOT)

1. Senator D'Amato's bill - far superior to Administration.
2. Section 18 initiated 3 years ago
Purpose: to meet basic mobility needs of nation's rural residents.
3. While I can only give you, at this point, statistics for New York State, I am sure the experience in other states is similar:

56 public trans. systems receive Sec. 18 funds.

19 are private bus companies
14 are small city transit systems
23 County - rural systems

4. These 56 systems use approximately 70% of their Sec. 18 funds for operating assistance; use 30% for capital projects;

Eliminating operating assistance as Administration bill proposes will pose grave & difficult choices for these systems:

For some: broad service cutbacks.

For others: cessation of operation.

Catastrophic impact on rural residents (the transit-disadvantaged: low income segment - elderly - handicapped - minorities.

CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY

IMPORTANCE OF SECTION 18 FUNDING, Page 2

5. Uncertainty of continued Operating Assistance past FY 85 has caused several systems to forego planned expansion.
6. Sec. 18 has become the only reliable source for capital funding. This includes the replacement of critically-needed vehicles and equipment in rural and small urban areas.
7. Loss of this funding would imperil the ability of systems to provide adequate and safe service. Any proposal which would continue to fund capital assistance only would do little good if the system cannot afford to operate and maintain its equipment.
8. Due to cutbacks in other federal programs which funded specialized transportation services, Sec. 18 is the resource for those services (particular reference to elderly and handicapped services).
9. Sec. 18 is the catalyst for consolidating all specialized services efficiently, effectively and with fiscal prudence. These will be severely impeded by the curtailing of operating assistance.

SUMMATION: Sec. 18 Program, in its short period of existence, has made great strides in meeting the basic mobility needs of the nation's rural dwellers.

It should be continued, largely as it has been.

Senator LUGAR. Thank you very much for your testimony. Mr. Putnam.

**STATEMENT OF EARLE PUTNAM, GENERAL COUNSEL,
AMALGAMATED TRANSIT UNION**

Mr. PUTNAM. Mr. Chairman, Senator D'Amato, my name is Earle Putnam. I'm General Counsel of the Amalgamated Transit Union. With me here today is our legislative director, Robert Molofsky.

It is my pleasure to represent our international president, John Rowland, in presenting the statement of the ATU here today.

Mr. Chairman, the labor movement through the AFL-CIO has a joint position on these bills which is stated in a letter which has been tendered to the subcommittee staff and we ask that it be included in the record along with our full statement here.

Senator LUGAR. It will be included.

[The information follows:]

STATEMENT OF
JOHN ROWLAND, INTERNATIONAL PRESIDENT
AMALGAMATED TRANSIT UNION, AFL-CIO

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

MY NAME IS JOHN ROWLAND AND I AM INTERNATIONAL PRESIDENT OF THE AMALGAMATED TRANSIT UNION, AFL-CIO. THE ATU REPRESENTS APPROXIMATELY 165,000 PUBLIC TRANSPORTATION WORKERS IN THE UNITED STATES AND CANADA. MOST OF THESE ARE EMPLOYED AS BUS DRIVERS, MAINTENANCE AND CLERICAL PERSONNEL IN THE URBAN MASS TRANSPORTATION INDUSTRY.

MR. CHAIRMAN, THE LABOR MOVEMENT, THROUGH THE AFL-CIO, HAS A JOINT POSITION ON THESE BILLS WHICH IS STATED IN A LETTER TO YOU WHICH I HAVE BEEN ASKED TO PRESENT TO YOU AT THIS TIME FOR INCLUSION IN THE RECORD. WE SHARE ALSO AND FULLY SUPPORT THE VIEWS OF PRESIDENT LINDNER OF THE TRANSPORT WORKERS UNION, WHO TESTIFIED BEFORE THIS SUBCOMMITTEE EARLIER THIS WEEK.

THE FOLLOWING STATEMENT REPRESENTS THE VIEWS OF THE AMALGAMATED TRANSIT UNION WITH PARTICULAR RESPECT TO S. 2367, THE TRANSIT ASSISTANCE ACT OF 1982, SUBMITTED BY THE ADMINISTRATION, AS WELL AS ON S. 2377, THE MASS TRANSPORTATION ACT OF 1982, INTRODUCED BY SENATORS D'AMATO AND HEINZ AND OTHER SENATORS.

WE OF TRANSIT LABOR CERTAINLY CANNOT AGREE WITH THE DIRECTIONS THIS ADMINISTRATION HAS CHOSEN TO TAKE IN SEEKING TO CONFINE THE FEDERAL ROLE TO CAPITAL INVESTMENT AND TO LEAVE THE STATE AND LOCAL GOVERNMENTS AND TRANSIT USERS THE ENTIRE BURDEN OF FUNDING TRANSIT OPERATIONS. WE ARE CONVINCED THAT THE ADMINISTRATION'S BILL AMOUNTS TO A DELIBERATE ABANDONMENT OF THE NATIONAL GOAL OF PROMOTING AN EXPANSION OF TRANSIT SERVICES AND INCREASED RIDERSHIP AS A MEANS OF PROVIDING MOBILITY AND JOB ACCESS TO ALL CITIZENS.

THE ATU HAS LONG RECOGNIZED THAT URBAN MASS TRANSPORTATION PLAYS A FUNDAMENTAL ROLE IN STRENGTHENING THIS NATION'S ECONOMY AND HAS WORKED IN PARTNERSHIP WITH GOVERNMENT, THE INDUSTRY AND OTHER UNIONS TO SECURE A STRONG FEDERAL COMMITMENT TO THE CONTINUED EXPANSION AND DEVELOPMENT OF MASS TRANSIT THROUGHOUT OUR URBAN AREAS.

IN THIS RECESSIONARY PERIOD OF HIGH UNEMPLOYMENT, MANY TRANSIT SYSTEMS ARE STRUGGLING TO MAINTAIN EXISTING SERVICES IN THE FACE OF A GROWING FINANCIAL CRISIS AS THE GAP BETWEEN COSTS AND INCOME WIDENS. BY SOME ESTIMATES, THE NATIONALLY AGGREGATED SHORTFALL IN TRANSIT BUDGETS MAY REACH \$1.6 BILLION IN 1982.

NEEDLESS TO SAY, THE CURRENT CRISIS IN THE INDUSTRY'S FINANCING IS OF GREAT CONCERN TO OUR MEMBERS, MANY OF WHOM ARE NOW OUT OF WORK AND ON LAYOFF STATUS, AND TO THEIR FAMILIES. IT IS ALSO OF GREAT CONCERN TO THE MANY MILLIONS OF AMERICANS WHO RELY ON TRANSIT AS THEIR PRINCIPAL OR ONLY MEANS OF MOBILITY, IN COMMUTING TO AND FROM THEIR OWN EMPLOYMENT IN OTHER INDUSTRIES.

THERE IS NO QUESTION THAT THE TRANSIT INDUSTRY CANNOT SOLVE ITS FINANCIAL PROBLEMS BY BURDENING RIDERS WITH EVER HIGHER FARES AND SERVICE REDUCTIONS, NOR IS IT IN THE NATION'S INTEREST TO RESPOND TO THESE FINANCIAL PRESSURES AND FISCAL WOES BY PROPOSING CUTBACKS AND PHASE-OUTS OF FEDERAL FUNDING AND THE TURNBACK OF TRANSIT PROGRAMS TO STATE AND LOCAL GOVERNMENT FOR SOLUTION. RATHER, WE SEE THIS AS A TIME TO REAFFIRM THE FEDERAL ROLE, WHICH IS TO STIMULATE TRANSIT INITIATIVES AND ACTIVITY AT THE STATE AND LOCAL LEVELS BY A STRONG AND ADEQUATELY FUNDED FEDERAL PROGRAM FOR BOTH CAPITAL AND OPERATING ASSISTANCE. ONLY SUCH A PROGRAM WILL, IN OUR JUDGMENT, ENCOURAGE THE

EXPANSION AND IMPROVEMENT OF TRANSIT SERVICES AND THE WIDEST POSSIBLE USE THEREOF AS AN ALTERNATIVE TO PRIVATE TRANSPORTATION.

MR. CHAIRMAN, WE NOW TURN TO THE SPECIFIC PROPOSALS CONTAINED IN THE TWO SENATE BILLS BEFORE US TODAY.

THE ADMINISTRATION'S ALLEGED EFFORTS IN S. 2367 TO REORDER THE PRIORITIES OF THE NATIONAL PUBLIC MASS TRANSPORTATION ASSISTANCE PROGRAM REPRESENTS A REGRESSIVE AND DESTRUCTIVE APPROACH TO THE NATION'S TRANSIT NEEDS. IF THIS BILL IS, INDEED, A PRECURSOR TO THE PRESIDENT'S PROGRAM OF NEW FEDERALISM, IT SEEMS TO US A STEP TOWARDS NO FEDERALISM AT ALL.

THE COMBINED LEVEL OF FUNDING CURRENTLY BEING PROPOSED BY THE ADMINISTRATION FOR THE ENTIRE CAPITAL GRANT AND OPERATING ASSISTANCE PROGRAMS AMOUNTS TO ONLY \$3.15 BILLION IN FY 1983. CONSISTENT WITH ITS PROPOSAL TO PHASE OUT OPERATING ASSISTANCE BY FISCAL YEAR 1985, THE ADMINISTRATION HAS PROPOSED \$640 MILLION FOR SECTION 5 OPERATING ASSISTANCE IN FY 1983, A 38 PERCENT REDUCTION FROM THIS YEAR'S LEVEL. SUCH PROPOSED FUNDING LEVELS WILL NOT MEET THE INDUSTRY'S NEEDS. RECENT ANALYSES INDICATE THAT A RESPONSIBLE TOTAL ANNUAL CAPITAL INVESTMENT LEVEL FOR THE INDUSTRY WOULD BE ON THE ORDER OF \$5 BILLION ANNUALLY FOR FUTURE YEARS. ACCORDING TO INDUSTRY ESTIMATES, THE COMBINED INDUSTRY FISCAL YEAR 1982 TRANSIT OPERATING DEFICIT WILL BE ON THE ORDER OF \$4.5 BILLION DESPITE ADOPTION OF FARE INCREASES BY MANY TRANSIT SYSTEMS. IT WOULD APPEAR, THEREFORE, THAT A SOUND NATIONAL MASS TRANSPORTATION FUNDING PROGRAM MUST HAVE AS ITS OBJECTIVE THE PROVISION OF FEDERAL, STATE AND LOCAL

FINANCING AMOUNTING TO APPROXIMATELY \$10 BILLION ANNUALLY. TOTAL FUNDING AVAILABLE FOR OPERATING ASSISTANCE IN FY 1983 SHOULD PROBABLY BE NO LESS THAN \$1.2 BILLION IF CURRENT FY 1982 RATIOS UNDER WHICH THE FEDERAL OPERATING ASSISTANCE PROGRAM COVERS APPROXIMATELY 22 PERCENT OF THE EXPECTED TRANSIT DEFICIT ARE TO BE RETAINED.

UNDER THE ADMINISTRATION'S CURRENT PROPOSALS FOR RESTRUCTURING TRANSIT CAPITAL ASSISTANCE UNDER A NEW SECTION 9, FORMULA GRANTS WILL TOTAL 90 PERCENT OF ALL CAPITAL FUNDING AND ONLY 10 PERCENT WILL BE ALLOTTED TO THE DISCRETIONARY PROGRAM FUNDED UNDER SECTION 3. ALTHOUGH A FORMULA GRANT ALLOCATION BASED ON A FEDERAL, STATE AND LOCAL REVENUE MATCH MAY OF ITSELF BE DESIRABLE, WE BELIEVE THE ADMINISTRATION'S PROPOSED BLOCK GRANT PROGRAM WILL NOT WORK. CAPITAL TRANSIT NEEDS VARY LOCALLY FROM YEAR TO YEAR, NOT ONLY BY TYPE AND AMOUNT OF FACILITIES AND EQUIPMENT NEEDED, BUT ALSO IN THE DOLLAR AMOUNTS REQUIRED FOR MAJOR CAPITAL CONSTRUCTION PROJECTS. WE BELIEVE A DISCRETIONARY PROGRAM UNDER SECTION 3 APPROACHING 50 PERCENT OF ALL FUNDS AVAILABLE FOR CAPITAL PURPOSES IS MORE SUITED TO THE NATION'S TRANSIT NEEDS. TO RESTRICT LOCALITIES TO THE FORMULA FUNDING, LIMITS THEIR CAPACITY TO ENGAGE IN LONG-TERM CAPITAL DEVELOPMENT. FURTHER, WE CANNOT UNDERSTAND THE DISCRIMINATORY PROHIBITION ON NEW RAIL STARTS OR OTHER EXTENSIONS SO LONG AS FUNDING OF SUCH CONSTRUCTION CONTINUES TO BE MADE AVAILABLE TO OTHER SYSTEMS WHICH ARE ALREADY ENGAGED IN SUCH PROJECTS. WHY SHOULD THE FEDERAL GOVERNMENT RESTRICT LOCAL URBAN AREAS FROM MAKING CAPITAL DECISIONS THAT RESPOND TO THEIR PERCEIVED TRANSIT NEEDS? NOR DO WE FIND ADEQUATE JUSTIFICATION FOR THE

ADMINISTRATION'S DECISION TO APPLY A MUCH LESS FAVORABLE MATCHING RATIO IN THE DISCRETIONARY PORTION OF THE CAPITAL PROGRAM FUNDED UNDER SECTION 3. WE BELIEVE THAT THE EXISTING 80-20 MATCHING SHARE ARRANGEMENT SHOULD BE MAINTAINED FOR ALL CAPITAL PROGRAMS AND ALSO THAT THE ADMINISTRATION'S PROPOSALS FOR A REDUCED FEDERAL SHARE WILL UNDULY HAMPER STATE AND LOCAL CAPITAL DEVELOPMENT PROGRAMS.

THE APPROACH TAKEN IN S. 2377 WHICH MAKES CAPITAL AND OPERATING AID PART OF ONE GENERAL ASSISTANCE PROGRAM FUNDED UNDER SECTION 3 SEEMS TO US FAR PREFERABLE TO THAT ADOPTED BY THE ADMINISTRATION. ALTHOUGH WE ARE NOT AT THIS TIME ENDORSING S. 2377, WE BELIEVE IT OFFERS A SOUND FRAMEWORK FOR FURTHER DISCUSSION WITHIN THIS SUBCOMMITTEE. FOLDING BOTH CAPITAL AND OPERATING ASSISTANCE INTO A SINGLE FORMULA PROGRAM FUNDED UNDER SECTION 3 OBVIOUSLY HAS MUCH TO COMMEND IT FROM OUR VIEWPOINT. OUR BASIC PROBLEM WITH THE BILL LIES WITH THE FUNDING LEVELS, WHICH WE CONSIDER SIMPLY TOO LOW TO MEET THE INDUSTRY'S LEGITIMATE NEEDS. IN PARTICULAR, IN LIGHT OF THE INDUSTRY'S GROWING DEFICITS, WE SEE NO BASIS TO IMPOSE A CAP AT FY 1982 LEVELS ON THE AMOUNT OF FUNDING THAT MAY BE USED FOR OPERATING PURPOSES. WE ESPECIALLY COMMEND THE SPONSORS OF S. 2377 FOR THEIR GOOD JUDGMENT IN RETAINING FULL APPLICATION OF THE LABOR PROTECTIVE PROVISIONS OF THE ACT, WHICH WE CONSIDER ESSENTIAL BOTH TO THE ONGOING ADMINISTRATION OF THE URBAN MASS TRANSPORTATION ACT PROGRAMS AND TO CONSTRUCTIVE RELATIONSHIPS BETWEEN GOVERNMENT, MANAGEMENT AND LABOR THROUGHOUT THE TRANSIT INDUSTRY.

UNFORTUNATELY, THE ADMINISTRATION, IN ITS BILL AND TESTIMONY BEFORE THIS SUBCOMMITTEE, HAS PROPOSED MAJOR CHANGES IN THESE

LABOR PROVISIONS. FIRST, THE LABOR REQUIREMENTS OF SECTION 13(c) OF THE ACT WOULD NOT APPLY AT ALL TO THE ADMINISTRATION'S SECTION 9 CAPITAL FORMULA PROGRAM CONSTITUTING 90 PERCENT OF ALL CAPITAL FUNDING, ALTHOUGH THEY WOULD BE RETAINED IN THE SECTION 3 DISCRETIONARY PROGRAM, PRESUMABLY TO DISCOURAGE EVEN FURTHER THE FILING OF APPLICATIONS FOR THESE FUNDS. SECOND, THE ADMINISTRATION PROPOSES TO ELIMINATE THE ALLEGED INTRUSIVE PRESENCE OF THESE LABOR PROTECTIONS AS A PROGRAM ELEMENT, WHERE STILL APPLICABLE, BY SUGGESTING THAT THEIR ADMINISTRATION BE TRANSFERRED FROM THE DEPARTMENT OF LABOR TO THE DEPARTMENT OF TRANSPORTATION. THERE, IT IS SAID, SECTION 13(c) WILL BE ADMINISTERED IN A MANNER "CONSISTENT WITH TRANSPORTATION POLICY," RATHER THAN WITH ANY THOUGHT OF FAIRNESS AND EQUITY TO THE EMPLOYEES INVOLVED. THIRD, THE COVERED GROUP OF EMPLOYEES ENTITLED TO THE PROTECTIONS OF SECTION 13(c) WOULD BE NARROWED TO EXCLUDE THE EMPLOYEES OF PRIVATE PARATRANSIT PROVIDERS OFFERING SHARED-RIDE TRANSPORTATION SERVICES ON DEMAND OR ON A FLEXIBLE SCHEDULE. AGAIN, THE ONLY JUSTIFICATION FOR THIS PROPOSAL IS THAT IT IS NECESSARY AS A MATTER OF TRANSPORTATION POLICY TO ENCOURAGE THESE SERVICES BY DENYING TO THESE EMPLOYEES ANY PROTECTIVE CONSIDERATION OF THEIR LEGITIMATE JOB RIGHTS AND INTERESTS.

MR. CHAIRMAN, WE WILL NOT REPEAT HERE OUR PRIOR TESTIMONY BEFORE THIS SUBCOMMITTEE RESPONDING IN DETAIL TO THE ADMINISTRATION'S FALSE CLAIMS THAT SECTION 13(c) AND THE FEDERAL OPERATING ASSISTANCE PROGRAM ARE SOMEHOW RESPONSIBLE FOR THE FINANCIAL PROBLEMS OF THE INDUSTRY AND ARE CAUSING BOTH INFLATED LABOR COSTS AND INEFFICIENT

SYSTEM MANAGEMENT. ALL THOSE WHO HAVE LOOKED INTO THESE MATTERS AND REPORTED THEIR FINDINGS, HAVE FOUND THAT TRANSIT LABOR IS NOT OVERPAID COMPARED TO OTHER PUBLIC EMPLOYEES, AND THAT THE SECTION 13(c) PROGRAM, AS ADMINISTERED BY THE DEPARTMENT OF LABOR, HAS NEITHER PREVENTED PARATRANSIT NOR OTHER INNOVATION, NOR GIVEN UNDUE LEVERAGE TO THE UNIONS IN THE COLLECTIVE BARGAINING PROCESS. IN THIS CONNECTION WE CITE TO YOU THE RECENT FINDING OF THE HOUSE OVERSIGHT AND INVESTIGATIONS SUBCOMMITTEE OF THE PUBLIC WORKS COMMITTEE WHICH SAID THAT SINCE THE MID-1970'S, TRANSIT WORKERS "HAVE FARED APPROXIMATELY THE SAME AS OTHER PUBLIC EMPLOYEES AND THE INDUSTRIAL WORKFORCE."

ANOTHER STUDY, ENTITLED "LABOR MANAGEMENT RELATIONSHIPS AND ISSUES IN MASS TRANSIT," FUNDED BY THE DEPARTMENT OF TRANSPORTATION (CONTRACT NO. DOT-OS-50116), COMPLETED IN DECEMBER 1981, CONCLUDED:

"A FEW CRITICS OF SECTION 13(c) HAVE CONTENTED THAT THE SECTION COULD BE USED BY THE UNION AS A LEVER TO OBTAIN FAVORABLE COLLECTIVE BARGAINING OUTCOMES. WE EXAMINED THIS ALLEGATION AS TO THE EXTENT OF SECTION 13(c) AGREEMENTS TO EFFECT: THE CLIMATE OF NEGOTIATIONS; TERMS OF THE LABOR CONTRACT; AND PROCEDURES IN REACHING LABOR SETTLEMENTS. FOR THE MOST PART, RESPONDENTS BELIEVED THAT SECTION 13(c) DID NOT MEASURABLY AFFECT THE COLLECTIVE BARGAINING ATMOSPHERE, AND ONLY ONE PROPERTY REPORTED THAT SPECIFIC LANGUAGE WAS NEGOTIATED INTO THE LABOR CONTRACT TO REFLECT SECTION 13(c) CONSIDERATIONS. THE RELATIVE LACK OF FINDINGS STRONGLY SUGGESTS THAT 13(c) HAS LITTLE CURRENT IMPACT ON THE TERMS OF THE LABOR CONTRACT***." (Study, pp. 223-4)

THE MOST RECENT GOVERNMENT ACCOUNTING OFFICE STUDY OF SECTION 13(c) PRESENTED TO THIS SUBCOMMITTEE JUST TWO DAYS AGO, LIKEWISE FAILED TO DOCUMENT CLAIMS THAT SECTION 13(c), AS IMPLEMENTED BY THE DEPARTMENT OF LABOR, HAS BEEN "AMONG THE MOST COSTLY AND INTRUSIVE OF FEDERAL LAWS" AND HAS CAUSED "TRANSIT SALARY INCREASES EXCEEDING SUCH INCREASES TO COMPARABLE WORKERS IN THE PRIVATE

AND PUBLIC SECTORS." AFTER SIX MONTHS OF EXTENSIVE INVESTIGATION AND VISITS TO 12 SEPARATE TRANSIT PROPERTIES, THE MOST THE GAO WAS ABLE TO ASSERT WAS THAT INTEREST ARBITRATION PROVISIONS WHICH THE PARTIES HAD AGREED TO IN THEIR SECTION 13(c) AGREEMENTS AT SIX OF THE PROPERTIES MIGHT HAVE CONTRIBUTED TO SOME INCREASE IN LABOR COSTS, BUT THE GAO COULD NOT DETERMINE THE EXTENT OF SUCH INCREASES BECAUSE IT WAS NOT POSSIBLE TO DETERMINE WHAT WOULD HAVE BEEN THE OUTCOME OF COLLECTIVE BARGAINING IN THE ABSENCE OF SUCH AN ARBITRATION REQUIREMENT.

MR. CHAIRMAN, THIS IS FAR FROM A SHOWING THAT WOULD JUSTIFY ANY REVISION OF THE LABOR PROTECTIVE REQUIREMENTS OF THE STATUTE. WE OPPOSE THE CHANGES PROPOSED BY THE ADMINISTRATION BILL, WHICH, IF ENACTED, WOULD SERIOUSLY JEOPARDIZE THE POLITICAL CONSENSUS THAT HAS ENABLED THE MASS TRANSIT PROGRAM TO DEVELOP OVER THE PAST 17 YEARS. THE ADMINISTRATION'S PROPOSALS CONSTITUTE A RADICAL ANTI-LABOR RESPONSE PREMISED ON FALSE ASSERTIONS LONG ADVANCED BY SEGMENTS OF THE INDUSTRY AND VARIOUS STATE AND LOCAL OFFICIALS HOSTILE TO PUBLIC EMPLOYEE COLLECTIVE BARGAINING WHICH HAVE NEVER BEEN SUBSTANTIATED BY REPEATED STUDIES WHICH HAVE BEEN UNDERTAKEN IN AN EFFORT TO PROVE SUCH CLAIMS.

MR. CHAIRMAN, WE CANNOT AND WILL NOT SUPPORT S. 2367 OR ANY SIMILAR LEGISLATION WHICH PROPOSES TO DENY TO AFFECTED TRANSIT EMPLOYEES THEIR RIGHT TO FAIR AND EQUITABLE ARRANGMENTS PROTECTING THEIR RIGHTS AND INTERESTS WHENEVER FEDERAL TRANSIT FUNDING IS INVOLVED. THE PROPOSED TRANSFER OF SECTION 13(c) JURISDICTION AND PERSONNEL FROM THE DEPARTMENT OF LABOR TO THE DEPARTMENT OF TRANSPORTATION IS EQUALLY UNACCEPTABLE AND DESTRUCTIVE OF CONCEPTS OF FAIRNESS AND EQUITY TO EMPLOYEES AFFECTED BY THE FEDERAL TRANSIT

PROGRAMS. THE DEPARTMENT OF TRANSPORTATION, THROUGHOUT MANY YEARS OF ADMINISTERING THE TRANSPORTATION SIDE OF THE UMTA ACT, HAS REPEATEDLY DEMONSTRATED ITS HOSTILITY BOTH TO LABOR PROTECTION CONCEPTS AND TO LEGITIMATE WORKER RIGHTS AND INTERESTS UNDER EXISTING SECTION 13(c) ARRANGEMENTS AND COLLECTIVE BARGAINING AGREEMENTS NOW IN PLACE. THE DEPARTMENT HAS REPEATEDLY SOUGHT LEGISLATIVE AND ADMINISTRATIVE CHANGES IN THE PROTECTIONS AND EXEMPTION FROM COVERAGE FOR PARTICULAR SERVICE PROVIDERS AND GROUPS OF EMPLOYEES. IN LIGHT OF ITS PAST HISTORY AND PREDILECTIONS ON THE SIDE OF MANAGEMENT IN THE BARGAINING PROCESS, THE DEPARTMENT OF TRANSPORTATION MUST BE LIKENED TO A FOX GUARDING A CHICKEN COOP WHICH COULD SCARCELY BE EXPECTED TO SERVE AS THE DESIGNATED PROTECTOR OF EMPLOYEE RIGHTS AND INTERESTS WHICH IT HAS ALWAYS CONSIDERED "IMPEDIMENTS" TO INNOVATION.

AT THE TIME OF THE ORIGINAL ACT, THE COMMITTEE REPORTS STRESSED THAT THE SECRETARY OF LABOR WAS TO HAVE EXCLUSIVE JURISDICTION TO MAKE THE DETERMINATIONS REQUIRED BY SECTION 13(c) AND, IN THE ADMINISTRATION OF THESE PROVISIONS, WAS TO HAVE SOLE RESPONSIBILITY TO DEVELOP GUIDELINES AND CRITERIA "AS TO THE TYPE OF PROVISIONS THAT MAY BE CONSIDERED NECESSARY TO ENSURE THAT WORKER INTERESTS ARE ADEQUATELY PROTECTED IN THE DIFFERENT TYPES OF SITUATIONS THAT MAY ARISE***." THUS, IT HAS ALWAYS BEEN THE SECRETARY OF LABOR, AND NOT THE UMTA ADMINISTRATOR, WHO WAS SELECTED TO ENSURE THAT THE INTENT OF THE CONGRESS IN REGARD TO THE LABOR PROVISIONS OF THE ACT WAS CARRIED OUT. WE BELIEVE, AS DO OTHERS, THAT IN PLACING THE JURISDICTION WITH THE DEPARTMENT OF LABOR, THE CONGRESS WANTED TO MAKE CLEAR THAT LABOR RELATIONS PRINCIPLES, RATHER THAN TRANSPORTATION CONSIDERA-

TIONS WOULD PREDOMINATE IN THE RESOLUTION OF DIFFICULT CASES. THE ADMINISTRATION'S BILL AND PROPOSED TRANSFER OF JURISDICTION WOULD CONSTITUTE A TOTAL REVERSAL OF THESE POLICIES FOR WHICH NO ADEQUATE JUSTIFICATION HAS BEEN PRESENTED. IN THE OVERALL, WE SUBMIT THAT THE LABOR RELATIONS PROVISIONS OF SECTION 13(c) AS ADMINISTERED BY THE DEPARTMENT OF LABOR HAVE A PROVEN TRACK RECORD AND HAVE WORKED SATISFACTORILY AND FAIRLY FOR THE BENEFIT OF ALL. THEY SHOULD NOT BE CHANGED.

ADDENDUM: Response to GAO Statement Submitted to the Committee on April 26, 1982: Review of Section 13(c)

The ATU presents the following response to the GAO's statement in "Review of Section 13(c) Employee Protection Agreements under the Urban Mass Transportation Act of 1964," given to this Committee on April 26, 1982. Essentially, the GAO admits that although its Report "may well reflect some bias" in favor of transit management, it cannot substantiate the allegations alleged on Section 13(c) misuse.

GAO recognizes that the Department of Labor (LMSA) relies on the transit grant applicants and unions to negotiate Section 13(c) matters, and, as a result, the terms and conditions contained in Section 13(c) agreements are the concensual product of labor-management negotiations. This, of course, was clearly the intent of Congress when it provided, in the Section 13(c) Committee Reports that the employee protections would be developed through "local negotiations." Only if impasse is reached, in the parties' own negotiations will the Secretary substitute his judgment and impose on both parties the "fair and equitable" employee protection arrangement required by the statute. Although GAO reported that "some" transit authorities feel that the need to reach agreement on a 13(c) as a condition precedent to receiving UMTA assistance places pressure on the authorities, there is no factual showing to substantiate this statement. Further, the statute itself clearly requires the Secretary to certify that fair and equitable employee protective terms and conditions are in place.

INTEREST ARBITRATION

Much is made of the fact that in Nashville the employees retained their right to strike after the public takeover. This is not disputed by the union. However, this Committee should clearly understand that the Section 13(c) agreements reached in 1973 and 1975 were negotiated by the parties, both of which were represented by counsel. The issue of interest arbitration was specifically addressed in the negotiations, for, at one point, Nashville's counsel opposed an interest arbitration provision on the ground that such a provision was unconstitutional in the state of Tennessee. The union produced a copy of the state law allowing for interest arbitration. Accordingly, the parties negotiated a procedure under which neither party was compelled to submit new contract disputes to final and binding arbitration. However, where either party submitted the impasse in negotiations to final and binding arbitration, then interest arbitration became mandatory. If neither submitted, both were left to whatever economic measures were available; i.e., strike, lockout, etc. The ATU has been engaging in final and binding interest arbitration from almost 1900. As a result of the Dade County type situations which led, in part, to Congress' enactment of Section 13(c), the union has always sought to include a neutral final and binding dispute settlement method in its Section 13(c) agreements. The fact is that the overwhelming majority of labor contracts in the transit industry are settled through negotiations, not interest arbitration.

As to the projected cost in Nashville, even the GAO report states that the company's estimates "were substantially overstated."

CONTRACTING OUT PROCEDURES

The GAO report lists Lane County Transit District, Eugene, Oregon, as a place where Section 13(c) "may" have had an effect on the transit authority's ability to contract out certain work. When the Union was advised of the District's application, which was filed during the comment period on UMTA's proposed bus rehabilitation regulations, the union understood that the Lane County rehabilitation work was, in fact, routine maintenance work. However, when advised that many of the line items in the job description were not within the capability of the shop, the union agreed to modify its proposal in order to let the District contract out most of the work, but keep the more minor line item work in house. During the negotiations, the union advised the Department of Labor that in light of the fact that there were other capital items sought in the project application, it would have no objection to an interim, or partial, certification so that the District could obtain the funding for those line items while negotiations on the rehabilitation work continued. For whatever the District's reason, it chose not to bring the Department of Labor into the picture to seek its mediatory services.

There have been many bus rehabilitation grants funded by UMTA, which have involved ATU local unions. Lane County

Transit District is the only applicant of which the ATU is aware which has not received bus rehabilitation grant funding.

PARATRANSIT SERVICES

The GAO report found that in 4 of the 12 transit authorities it visited, Section 13(c) agreements contained provisions affecting the Authority's management of paratransit projects. The provision of paratransit services remains controversial in the industry in that the union continues to perceive paratransit as not merely elderly and handicapped door-to-door services, but a threat to the workers' job security through competitive or substituted service. Assuming a transit grant applicant purchased paratransit vehicles which were contracted to a third party provider and then used by another party as a replacement for the applicant's fixed route service, substantial Section 13(c) adverse affect claims for monetary allowances would be raised. Thus, as a protection for both transit grant applicants and the workers, the parties in 13(c) paratransit negotiations over the years have developed a "fence" concept. Under the fence concept, paratransit vehicles are used in such a manner that they will not "compete with, replace or displace" fixed route services. A close reading of the GAO report dealing with the Tidewater Transportation District Commission paratransit project quickly indicates that management is mainly complaining that it, in good faith negotiations, drew the fence too tightly; i.e., it now wishes it had negotiated a different employee protection arrangement. As to the maintenance work, it should be pointed out that because the community already owned the TTDC garage/maintenance facilities,

and paratransit vehicles have to be repaired somewhere, TTDC had no major objections to the union's proposal that maintenance work be performed in the community owned shops.

PROTRACTED NEGOTIATIONS ON 13(c) AGREEMENTS

Under this heading, the GAO lists the Metropolitan Transit Development Board in San Diego. However, the San Diego MTDB has never filed an application for UMTA funds. It is no more than self-serving speculation whether the San Diego Transit Corporation's proposal to be the line operator was truly rejected because the MTDB "feared" that our local union could have used its Section 13(c) agreement to unionize the Board's trolley employees and thus obtain higher salaries.

As to the New Jersey situation, the GAO is in error. The union's initial position before the legislature was that it wanted to retain its right to strike. However, the sense of the state legislature was that if the state acquired the privately owned company, arbitration should be imposed and strikes forbidden to prevent disruption of essential public services. Hence, transit employees received essentially the same arbitration rights under the state Act that police and firemen have enjoyed for many years. Additionally, the state did not seriously pursue its application to acquire the two bus systems in question nor obtain the necessary funding therefor until after the September 15, 1980, Section 13(c) agreement was executed. In fact, all through negotiations on the September 15, 1980, agreement, it was the state's position that the parties were not dealing with the acquisition project. After the acquisition project was filed, the parties negotiated

supplemental 13(c) protections that related to the specific project in fairly short order--approximately one month. The interest arbitration provision in the 13(c) agreement is entirely consistent with the state Act.

INABILITY TO NEGOTIATE SECTION 13(c)

Perhaps the most glaring inaccuracy in the GAO report is its statement that the Snohomish County PTBAC, near Seattle, Washington, did not obtain a federal grant because it and our Local 1576 could not agree on a Section 13(c) agreement. In fact, the parties did reach agreement at a mediation session at the U.S. Department of Labor. Further, it is alleged that the Snohomish County PTBAC officials said they could not sign the proposed Section 13(c) agreement because it required them to submit to "onerous legal liabilities." For example, they objected to interest arbitration. However, as the Department of Labor official who mediated the negotiations between the parties can affirm, the union withdrew its interest arbitration proposal as part of an overall compromise to reach agreement.

The Committee should be aware of the fact that the director of the Snohomish County PTBAC, Vic Sood, had an article published in the fall, 1979, issue of Transit Journal, published by the APTA, entitled, "Going It Alone: Why One Small Operator Bought Buses Without Federal Aid." Although Section 13(c) is highlighted as an alleged problem, Mr. Sood states:

"Elderly and handicapped requirements require accessibility rather than mobility. In a system such as ours, where we serve many areas which have no sidewalks, a fully accessible system cannot help those people who cannot reach the bus route. In addition, the technology has not been developed

to make a dependable wheelchair lift available. Thus, there will be a great deal of under-utilized, expensive equipment in operation.

"In addition, specifications in bid approval requirements create delays and compromise the quality of equipment which may be acquired. This strict low bid edict can also add a great deal of future operating costs of inferior buses over the 10-12 year lifespan of a transit vehicle.

"These are but some of the reasons why the Snohomish County Public Transit Benefit Area Corporation decided in March 1978 to withdraw its application for federal assistance. These and other strings add up to a loss of operational flexibility, increased administration expenses, increased maintenance costs, decreased operating revenues, and inflated capital costs due to delays in equipment acquisition...."

We respectfully suggest to the Committee that having reached a 13(c) agreement with the union, Snohomish County, in light of these other factors, made its own decision to withdraw its capital grant application and do without federal funding.

OBSERVATIONS

Although the GAO report seems to indicate that interest arbitration provisions were not necessary to maintain the status quo in bargaining, those GAO representatives appearing on April 26 before this Committee, in response to a question from Senator Dodd, did recognize that interest arbitration was an appropriate quid-pro-quo for the loss of the right to strike and the maintenance of the status quo.

Again, GAO recognized that it would be merely speculative to compare the results of bargaining with the benefit of Section 13(c) provisions with what would have been the results in their absence.

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April 27, 1982

Honorable Richard Lugar, Chairman
Housing & Urban Affairs Subcommittee
Senate Committee on Banking, Housing
& Urban Affairs
5300 Dirksen Senate Office Building
United States Senate
Washington, D.C. 20510

Dear Chairman Lugar:

The AFL-CIO is most anxious that you and your colleagues receive our views on S. 2367, the Transit Assistance Act of 1982, submitted by the Administration, and S. 2377, the Mass Transportation Act of 1982, introduced by Senator D'Amato and others.

In our view, the Administration's bill (S. 2367) represents a total reversal of sound urban mass transportation policies established by the Congress in the Urban Mass Transportation Act of 1964 and reaffirmed time after time in subsequent amendatory legislation. These policies alone have made possible the continued development and expansion of urban mass transit systems assuring mobility for millions of Americans and access to job opportunities, essential to our economy.

The Administration's proposals serve not only to undermine this nation's urban transit commitment, but also operate on the false premise that state and local initiatives will fill the gap created by its major reductions in overall federal funding and its total phaseout of the operating assistance program. We submit that this unwarranted withdrawal of federal support, as proposed in S. 2367, will inevitably lead to a major loss of transit services and to their total disappearance in some communities, with resultant detrimental impact on this nation's economy. Without replacement funding, which the states and local governments are themselves unable to provide, more and more systems will have no choice but to raise fares and reduce services, thereby producing ridership loss and further financial deterioration.

We strongly prefer the concepts contained in S. 2377, sponsored by Senators D'Amato, Heinz and others which recognize the necessity for a strong federal role, including both capital and operating assistance, through a block grant formula rewarding state and local funding efforts. Although its funding levels, too, are totally inadequate to a sound federal mass transportation program, the D'Amato bill leaves intact the core structures of the federal transit aid program, and, we believe, offers a sound framework for extension of the existing programs.

Chairman Richard Lugar

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April 27, 1982

Unlike the Administration's bill, S. 2377 proposes no changes in the labor protective provisions of the Act which constitute the basis for a constructive working relationship between the government, industry and the unions in the operation of the transit program. We believe this represents good judgment on the part of the bill sponsors and urge their retention by the Subcommittee as an essential part of any ongoing national program in aid of mass transit.

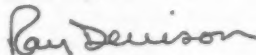
The Administration's bill contains ill-conceived, anti-labor provisions which would be destructive of good labor-management relationships in the transit industry. These would render the labor protective provisions of Section 13(c) inapplicable to 90 percent of the federal support programs and transfer from the Department of Labor to the Department of Transportation, despite the latter's lack of expertise, the administration of these labor provisions where still applicable. Also unacceptable is the Administration's proposal to undercut Davis-Bacon requirements by allowing grant recipients to receive federal funding based on their own self-certification that they are in compliance.

We strongly urge that the protective requirements of Section 13(c), as administered by the Department of Labor, and the protective requirements of the Davis-Bacon Act be maintained intact in any legislation that is enacted to carry forward the urban mass transportation program.

I am submitting herewith in further elaboration of the views of the AFL-CIO the most recent resolution on Mass Transit as adopted on November 17, 1981, by the Fourteenth Constitutional Convention of the AFL-CIO.

I request that this statement, along with the Convention Resolution, be included in the record of the Subcommittee's hearings on this proposed transit legislation.

Sincerely,



Ray Denison, Director
DEPARTMENT OF LEGISLATION

Enclosure

Copies to all Banking Committee Members

Mass Transit

RESOLUTION NO. 67—By Amalgamated Transit Union.

WHEREAS, The public transportation system in the United States faces a critical situation today. A reversal of national policy has been advocated and is in the process of being carried out by the Reagan Administration. Federal assistance for rail and bus transit is to be phased down and out, and capital grants are to be severely cut back and held down, and

WHEREAS, This is a total reversal of urban mass transportation policy established by Congress in the Urban Mass Transportation Act of 1964 and reaffirmed by Congress time after time in subsequent years. And it is founded on the false assumption that state and local initiative will be adequate to stimulate and maintain the mass transit facilities and services our urban centers need. As a matter of fact, it was the lack of these initiatives in the past that produced the need for stimulus at the national level and funds from the federal treasury. No reason or justification has been brought forth to justify such a reversal of urban mass transportation policy. We reject such a reversal of national policy and call on Congress to do likewise, and

WHEREAS, Public transportation is the only means of mobility for millions of Americans, especially the poor and aged. Our nation continues to need a national transportation policy which will provide that at least 14 percent of the transportation needs of our urban areas will be served by mass transit systems by 1985. At present, only 4 percent of these needs are met; therefore, be it

RESOLVED: That a national mass transportation policy must include these elements:

1. At the level of national policy, the urban mass transportation program must have as its objective the provision of funding under the Urban Mass Transportation Act of 1964, as amended, amounting to a minimum of \$10 billion annually.

2. To insure continuation and expansion of existing programs, the formula grant portion for operating assistance in the Urban Mass Transportation Act must be revised to assure more equitable distribution of these funds on a per rider basis. Total funding available for operating assistance must be increased and extended to assure continuation of essential services and the predictability of such assistance for a five-year period.

3. Any program of expanded federal aid for mass transit must assure that each level of government shall preserve and promote the collective bargaining process; that must be left to local self-determination between the industry and the unions representing the workers in the industry.

4. The labor protection provisions of the Urban Mass Transportation Act must remain the exclusive responsibility of the Department of Labor.

5. Congress should make plain that the obligation to maintain labor standards includes the payment of prevailing wages to all workers engaged in the construction or operation of mass transit facilities in any program involving federal financial assistance. Such standards should also guarantee to rail and transit workers the first opportunity for employment on any new transportation system which is built with federal funds.

6. No-fare transit as a means to encourage ridership and thereby reduce energy consumption has proved itself in comprehensive, monitored tests such as those conducted in 1979 in Denver, Colorado, and Trenton, New Jersey. It has been estimated that a substantial percentage of our foreign oil imports could be saved daily by the adoption and implementation of a program of no-fare transit on a nationwide basis.

7. The transit industry must be prepared to respond to the expanded needs of urban travel as the energy crisis builds up. This will require an immediate tripling of our transit vehicle manufacturing capability, as well as the mobilization of other facilities and the preparation of personnel to handle the increased ridership. To stimulate production the Urban Mass Transportation Administration must assure the manufacturers that every transit vehicle they produce will be purchased by the federal government or by an applicant for funding assistance.

Finally, rather than dismantle the existing federal transit support network, the Congress must insure that sufficient funds will be available to increase ridership by at least 50 percent in this decade and keep fares at reasonable levels while doing so. Such expanded federal efforts will increase employment, spread the flow of goods and service in our urban areas significantly, promote energy conservation and aid in the fight for clean air, and reduce our dependence on imported oil, as well as reduce inflation.

Rather than deny, through the budgetary, regulatory or administrative processes, that there is a federal transit purpose in this nation, continuation and expansion of existing programs must be insured. Of special importance is the continued maintenance and strengthening of the formula grant program, for operating assistance, and especially assurance of more equitable distribution of operating assistance funds on a per rider basis. Total funding for operating assistance must be increased and extended—not phased out—to assure predictability of essential services in the future.

Referred to Committee on Resolutions.

PROCEEDINGS
FOURTEENTH CONSTITUTIONAL CONVENTION

of the
American Federation of Labor
and
Congress of Industrial Organizations

SECOND DAY — MORNING SESSION

Tuesday, November 17, 1961

MASS TRANSIT

Resolution No. 67, Page 89

This resolution states that the public transportation system is in a critical situation as a result of the policies of the Reagan Administration. It asserts that the administration's program is founded on the false assumption that state and local initiative will stimulate and maintain the facilities and services urban centers need.

A national mass transportation policy is called for, that must include elements such as:

1. Funding under the Urban Mass Transportation Act of 1964.
2. Increased funding for operating assistance.
3. Preservation and promotion of collective bargaining in the industry.
4. Exclusive responsibility of the Department of Labor for the labor protection provisions of the Urban Mass Transportation Act.
5. Maintenance of labor standards including prevailing wages to all workers engaged in the construction or operation of mass transit facilities in any program involving federal financial assistance.
6. No-fare transit as a means to encourage ridership and reduce energy consumption and
7. A tripling of transit vehicle manufacturing capability, as well as the mobilization of other facilities and the preparation of personnel to handle the increased ridership.

The Committee recommends amending Item No. 7, Page 90 of Resolution No. 67 by deleting the sentence beginning with phrase "To stimulate" and substituting the following sentence: "The federal and state laws which promote American production should be vigorously enforced and regulations to implement them should be reviewed to make sure that U.S. production is encouraged."

The Committee recommends adoption of Resolution No. 67 as amended, and I so move.

. . . The recommendation of the Committee was adopted.

Mr. PUTNAM. We of transit labor certainly cannot agree with the directions the administration has chosen to take in seeking to confine the Federal role to capital investment and to leave to the State and local governments and transit users the entire burden of funding transit operations.

The current crisis in the industry's financing is of great concern to our members, many of whom are now out of work and on layoff status, and to their families. There is no question that the transit industry cannot solve its financial problems by burdening riders with ever higher fares and service reductions, nor is it in the Nation's interest to respond to these financial pressures and fiscal woes by proposing cutbacks and phaseouts of Federal funding and the turnback of transit programs to State and local governments for solution.

The administration's effort to reorder the priorities of the national mass transportation assistance program in our view represents a regressive and destructive approach to the nation's transit needs.

The approach taken in Senator D'Amato's bill which makes capital and operating aid part of one general assistance program funded under Section 3 seems to us far preferable to that adopted by the administration. We especially commend the sponsors of that bill for their good judgment in retaining full application of the labor protective provisions of the Act.

OPPOSE CHANGES IN LABOR PROVISIONS

Unfortunately, the administration in its bill and testimony before this subcommittee has proposed major changes in these labor provisions. We oppose these changes as proposed by the administration's bill which, if enacted, would seriously jeopardize the political consensus that has enabled the mass transit program to develop over the past 17 years. The administration's proposals constitute a radical anti-labor response premised on false assertions long advanced by segments of the industry and various State and local officials hostile to public employee collective bargaining which have never been substantiated by repeated studies which have been undertaken in an effort to prove such claims.

Mr. Chairman, the proposed transfer of Section 13(c) jurisdiction and personnel from the Department of Labor to the Department of Transportation is also unacceptable to the labor movement. The Department of Transportation throughout many years of administering the transportation side of the UMTA Act has time and again demonstrated its hostility both to labor protection concepts and to legitimate workers rights and interests under existing Section 13(c) arrangements and collective bargaining agreements now in place. The Department of Transportation must be likened to a fox guarding a chicken coop which could scarcely be expected to serve as a designated protector of employee rights and interests which it has always considered "impediments" to innovation.

In the overall, we submit that the labor relations provisions of Section 13(c) as administered by the Department of Labor have a proven track record and they have worked satisfactorily and fairly for the benefit of all. They should not be changed.

We have submitted as an addendum to our statement, Mr. Chairman, a detailed response to the statement presented earlier this week by the Government Accounting Office. We ask that also be included in the record.

Senator LUGAR. It has been included in the record accompanying your prepared statement.

Mr. PUTNAM. That concludes our prepared remarks and we'd be happy to answer any questions you may have.

Senator LUGAR. Thank you very much, Mr. Putnam.

Senator D'Amato, do you have questions for the witnesses?

Senator D'AMATO. Well, Mr. Chairman, I would like to commend them for their presentation and make an observation. I think Mr. Frank will appreciate this, given the kind of constituency which he serves.

A small city, Rochester, N.Y., 300,000 people under the proposed administration bill would receive \$4.6 million, more than twice as much money than they've ever spend on their capital improvement programs which are basically the acquisition of buses.

Now it doesn't make much sense to me, to this Senator, to give a city twice as much as they've ever spent in any 1 year for new equipment and then deny them revenues necessary for operating and maintaining what they have.

So what we see is that many of these smaller communities will never be able to avail themselves of those revenues because it would simply be squandering and wasteful, and yet to deny them adequate funds to maintain those same vehicles seems to me to be wasteful practices. And I just think that's the bottom line and I share this concern with the chairman and with other members of the committee because I do think that we can fashion a program that recognizes budget restraints, that will promote and not detract from our transit needs.

And I thank those witnesses who have waited and listened so patiently through the morning and I commend the chairman for conducting these very, very necessary hearings, and I thank the chairman for his graciousness.

Mr. FRANK. Senator, may I make one last comment that follows Senator D'Amato's comments here? I wanted to say it earlier that it just doesn't make any sense to me to see the millions and billions of dollars that have been spent to create transit systems now be destroyed due to an end to Federal funding. To destroy them now is just beyond my comprehension. There is a tremendous need for a form of operating assistance and there is a tremendous need to maintain section 18-type funding.

Senator LUGAR. I appreciate very much your testimony in general and the particular emphasis which has filled out our hearing record on section 18. Likewise, Mr. Putnam, we appreciate your testimony. This is very helpful in completing our record on section 13(c). We had witnesses, as you know, in our previous hearing—you referenced that and added a very useful addendum to that record.

Needless to say, NACO is always appreciated at these hearings and, likewise, the Regional Council. It added so much to our enrichment and testimony in all sorts of ways and especially with regard to this planning point that you make today. I would ask the staff to think through carefully the language in all of the proposals

we have so that as best we can we meet that point, which is I think an excellent one with regard to local participation, quite apart from transit interests that may be only a part of that local authority.

At this point, unless Senator D'Amato has additional questions, we will thank you for coming and adjourn this hearing. Thank you very much.

[Whereupon, at 12:30 p.m., the hearing was adjourned.]

[The following information was ordered inserted in the record at this point:]

Snohomish County Public
Transportation Benefit
Area Corporation

4208 198th Street S.W., Suite 201
Lynnwood, Washington 98036-6780
Phone: Lynnwood: 206-778-1159
Everett: 206-259-4223

May 6, 1982

The Honorable Richard Lugar, Chairman
Senate Housing and Urban Affairs Subcommittee
Room 5300, Dirksen Building
Washington, D.C. 20510

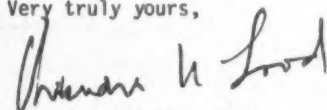
Dear Senator Lugar:

I have had the opportunity to review the testimony given to your Committee on April 28, 1982, by Mr. John Rowlands, International President of the Amalgamated Transit Union AFL-CIO, on S.2367 and S.2377. In an addendum, Mr. Rowland responded to the GAO statement submitted to the Committee on April 26, 1982, on the "Review of Section 13(c)".

In order to get the record straight, attached is our rebuttal to the misstatements made by Mr. Rowlands.

I would like this response made a part of the record and included in the testimony.

Very truly yours,



Virendra (Vic) K. Sood
Director

Attachment

After reviewing the Addendum to the Statement of John Rowland, International President of the Amalgamated Transit Union, AFL-CIO, before the Senate Housing and Urban Affairs Subcommittee of the Senate Committee on Banking, Housing and Urban Affairs, dated April 28, 1982, we at Snohomish County P.T.B.A. believe that it is imperative that the misleading statements in that Addendum be pointed out.

1. Clearly, the aforementioned Addendum of Vic Sood in the article published in the Fall, 1979, issue of Transit Journal, published by American Public Transit Association, entitled "Going It Alone: Why One Small Operator Bought Buses Without Federal Aid" was quoted completely out of context. We are attaching the entire article to this Rebuttal to set the record straight regarding this article. Also, the following statement found in that same article should be noted:

"In March, 1978, the SCPTBAC Board made the major decision that if it could not negotiate an acceptable 13(c) agreement, it would make every effort possible to purchase new buses, bus shelters, and other equipment with local financial resources, even though it could mean a slower and more gradual expansion of the transit system..."

2. Although the negotiators of the Snohomish County PTBA and the Union at the U.S. Department of Labor were close to reaching an agreement, such agreement was not reached.

The Union proposed to resolve some of the objections of the Snohomish County PTBA by "side letters". Such side letters were letters from one of the attorneys of the International Amalgamated Transit Union (ATU) to the local union president. When the representative of the ATU was asked if such side letter would be binding, the representatives of Snohomish County PTBA were told that side letters could be withdrawn by the union at any time and were used so that it would not be apparent to other transit systems who view the 13(c) agreement that the union had made any concessions.

The Board of the Snohomish County PTBA did not in any way approve a 13(c) agreement.

It should be finally emphasized again that the parties did not reach an agreement and there is no evidence of any such agreement.

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May 6, 1982

The Honorable Jake Garn
5121 Dirksen (NSOB) Building
Washington, DC 20515

Dear Senator Garn:

I am writing to you concerning Federal Mass Transit Authorization Legislation currently under consideration by committees and sub-committees of the U.S. Senate and the U.S. House of Representatives.

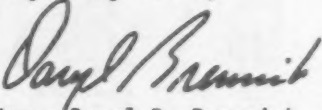
We are requesting that any Federal Mass Transit Authorization Bill eliminate the following requirements:

1. Section 13 (c) of the Urban Mass Transportation Act of 1964, as amended, relating to employee protections.
2. Section 504 of the Rehabilitation Act of 1973, dealing with the transportation of elderly and handicapped persons.

Your support for the elimination of the above items would be greatly appreciated.

With my good wishes.

Very Truly Yours,



Mayor Daryl D. Brennick, Chairman

DDB:at

Going It Alone: Why One Small Operator Bought Buses Without Federal Aid

By Vic Sood

Director

*Snohomish County Public Transportation Benefit Area Corporation
Lynnwood, Wash.*

The greatest problem facing small transit operators in their dealings with the federal government is the federal government itself. The federal programs intended to assist and encourage the development of both large and small transportation systems impose burdensome regulations and requirements upon operating agencies in order to acquire the assistance to which they are entitled.

The Urban Mass Transportation Administration has promulgated rules and regulations which make the application for acceptance, requisition, and use of funds authorized by the Urban Mass Transportation Act of 1964 and subsequent legislation extremely burdensome and costly to the transit oper-

The Author

Vic Sood is the director of Lynnwood, Wash.'s Snohomish County Public Transportation Benefit Area Corporation, which he helped to form several years ago. He was appointed director in 1977, after having served as acting director for a year, and seeing greatly expanded transit services.

Sood also worked as a transit planner in the county. Prior to that, he was with the Boeing Company in Seattle, where he took part in static and fatigue testing of the 747 airplane. He also worked for an aerospace company near London, England, and in Canada.

He attended an orientation for ex-aerospace engineers at the University of California at Berkeley, focusing on local government, before switching careers. Sood has been instrumental in getting transit funding for counties in Washington.

Sood was born in Kenya, Africa. He holds a degree in mechanical engineering from the University of London.

Sood was born in Kenya, Africa. He holds a degree in mechanical engineering from the University of London.



ator and the taxpayer.

For example, Section 13(c) requirements have grown to incredible proportions in the form of a model agreement which in no way is appropriate for the small and medium-sized transit operation. It is a complex document which increases staff workload, impedes operational flexibility, reduces scheduling flexibility, and can place the system in jeopardy of increased administrative and bureaucratic expenses and delays.

Elderly and handicapped requirements require accessibility rather than mobility. In a system such as ours, where we serve many areas which have no sidewalks, a fully accessible system cannot help those people who cannot reach the bus route. In addition, the technology has not been developed to make a dependable wheelchair lift available. Thus, there will be a great deal of underutilized, expensive equipment in operation.

In addition, specifications and bid approval requirements create delays and compromise the quality of equipment which may be acquired. This strict low bid edict can also add a great deal to future operating costs of inferior buses over the 10-12-year life span of a transit vehicle.

These are but some of the reasons why the Snohomish County Public Transportation Benefit Area Corporation decided in March 1978 to withdraw its application for federal assistance. These and other strings add up to a loss of operational flexibility, increased administration expenses, increased maintenance costs, decreased operating revenues, and inflated capital costs due to delays in equipment acquisition.

Snohomish County inaugurated transit services in October 1976, as a less than countywide transit system serving a rural/suburban area with a population of approximately 175,000.

The initial service was provided by 18 leased 35-foot General Motors Corporation buses (with an average age of 16 years) and three leased Mercedes 16-passenger small buses. Maintenance on the vehicles is performed by the local school district. Inter-city service on four routes is provided by the Municipality of Metropolitan Seattle under contract. The operational subsidy is provided from a locally generated 0.3% retail sales tax and matching monies from the state motor vehicle excise tax.

Our observations have shown us that, in terms of a small system such as Snohomish County, these excessive federal burdens and costs are not in the best interests of the public to whom we are responsible. We had requested UMTA to consider the possibility of a special classification of public transportation operators which would take into account the fact that the smaller transportation systems in this nation can ill-afford to absorb the costs associated with increased administrative workloads, inflated equipment costs, and increased operational and maintenance costs. Just as important, new inexperienced systems cannot forfeit the flexibility that these regulations and agreements require.

Perhaps these current rules and regulations have their place in relation

FALL 1979

to large, mature systems; they have proven to be entirely too burdensome for the small operator. This burden is, in our opinion, a significant barrier to communities who wish to establish a new transit system and is preventing these communities from benefiting from their tax contributions. In a time when the federal government should be encouraging public transportation and experimental efforts in the face of our energy crisis, a set of government actions is to withdraw support from transit systems that do not wish to be cast in the same mode as existing systems.

The Snohomish County board of directors had developed a set of general policies which were followed in making the decision:

- The transit system should have complete flexibility in planning operations and in the development of the system.
- Develop a sound funding base with emphasis on local funding for capital improvements and operations.
- Local elected officials, with local input, have local control.
- Supplement local resources with federal resources if the transit system can tailor criteria with the federal agencies for receiving funds to meet its needs.

In March 1977, SCPTBAC submitted a capital grant application to UMTA for \$1.6 million, to acquire new buses sorely needed to replace the leased, older vehicles. The grant application was favorably received by UMTA and was scheduled for award in the fourth quarter of Fiscal Year 1977. It was then postponed to the first quarter of FY 1978. Attempts to negotiate the 13(c) labor agreement with both the Local and the International Amalgamated Transit Union proved fruitless, and our attempts to acquire clarification of issues and minimum requirements from the U.S. Department of Labor were futile. In the meantime, running the aging buses was a financial burden on the transit system due to high maintenance costs, frequent trouble calls, and excessive downtime.

In March 1978, the SCPTBAC board made the major decision that if it could not negotiate an acceptable 13(c) agreement, it would make every effort possible to purchase new buses, bus shelters, and other equipment with local financial resources, even though it could mean a slower and more gradual expansion of the transit system. Also influential in the board of directors' decision were the Section 504 rules and regulations relating to transportation needs of the elderly and the handicapped.

The board of directors began to see the hurdles and the negative side of receiving federal capital assistance:

- the U.S. Department of Labor and the Amalgamated Transit Union were inflexible over changes to the boilerplate 13(c) agreement;
- numerous unfunded liabilities were inherent in the provisions of the 13(c) agreement;
- the flexibility of SCPTBAC's management was being impaired to make future operational changes;

TRANSIT JOURNAL

- substantial delays were experienced in dealing with federal agencies when the needs of the community were waiting to be met; and
- unreasonable drains were being made on the staff time of a small operator (approximately \$30,000 in staff, legal, and other administrative costs).

We began to see the opportunities emerging in going it alone, and withdrew the \$1.6 million UMTA capital grant application after a careful review of local resources. This gave the board of directors local control and eliminated unnecessary hurdles to operations and future decisions to expand the system. This further enabled SCPTBAC to meet the service needs of the community and released the transit system from the mentality that the federal government is going to be an unlimited source of funds when federal funds are becoming more scarce.

The decision was a responsible decision, offering freedom and local control to the community it served. The community applauded this decision and endorsement was given by the local press and radio stations in editorials and by community leaders.

SCPTBAC approved specifications for 35-foot long, 96-inch wide, 43-seat conventional buses and called for bids for 18 vehicles in May 1978. Three bids were received and in August 1978, the bid was awarded to Flyer Industries of Winnipeg, Man., at a cost of \$74,500 per bus. In September 1978, six additional buses were purchased at the same price. The first new buses were delivered in February and the new fleet of Flyer buses went into service on April 2. The total time span from the board's decision to acquire buses with local funds to putting them into service was approximately 12 months. During that same time period, 10 bus shelters have been installed and in June the installation of the two-way radio system on all the Flyer buses was completed.

The trend in the use of local financial resources to purchase buses continued in the state of Washington. The Bellingham Transit System, owned by the city of Bellingham, has recently received delivery of five General Motors of Canada 35-foot buses and has ordered six more—all with local funds. Other transit systems in the state are now considering acquiring new vehicles using local financial resources. The realities of sharply rising fuel costs, long lines at gas stations, the sharply increasing demand for public transit, and decreasing federal funds are prime factors in use of local resources to meet local needs speedily.

In conclusion, public transit systems should consider that the availability of federal financial assistance may not be a foregone conclusion. Local control which comes with local resources is preferable—if you can go it alone. A transit system which is the manager of its own destiny will best survive the difficult economic times ahead. ■

DEPARTMENT OF TRANSPORTATION

ANSWERS TO QUESTIONS SUBMITTED BY SENATORS RIEGLE AND DIXON

Senator RIEGLE. In Mr. Teele's testimony last week before the Senate Appropriations Committee, he states that "The operating assistance program has generated unwarranted expectations as to levels of service local governments can realistically afford to provide. It has unduly distorted the collective bargaining process . . . obviated the need for local governments to make the politically difficult decisions necessary to bring costs into line. . . . So long as the Federal Government underwrites the difference between local contributions and the overall cost of operating a transit system, there is little incentive for transit operators to hold these costs down."

A. Can you tell us what percentage of this "difference" the Federal Government actually underwrites: (a) at a national average? (b) at a maximum? (c) in larger cities such as Chicago or Boston?

B. Did the Department look at alternatives to ending operating assistance that would have imposed controls or disincentives to waste of federal funds?

C. Doesn't a reduction or leveling off of Federal assistance signal the need for such control without depriving those systems which legitimately depend on Federal assistance?

D. Wouldn't a restructuring of the distribution formula to reward service and efficiency accomplish many of these same goals?

RESPONSE. The four parts of this question are answered individually as follows:

A. The following are based upon Section 15 data covering local fiscal years ending between July 1, 1979 and June 30, 1980:

(a) At the national aggregate level, approximately 16.9 percent of operating expenses were financed from Federal operating subsidies.

(b) The maximum cost coverage by Federal subsidies is limited by the UMT Act to 50 percent of operating deficits since each Federal dollar must be matched by non-Federal and nonfarebox contributions. The average system having up to 99 vehicles (our records indicate 238 such properties) received more than 25 percent of its expenses from the Federal program.

(c) Federal coverage of operating expenses for 14 cities having transit fleets in excess of 1,000 vehicles was 16.3 percent. The Chicago Transit Authority received approximately 12.7 percent of its subsidies from the Section 5 program; the level in the Southeastern Pennsylvania Transportation Authority (SEPTA) was 22 percent; in Los Angeles, 28.6 percent; in the New York City Transit Authority, 10.4 percent, and in Boston, 9.2 percent.

B. In the years since adoption of the Operating Assistance Program in 1974, the Department has considered ways of ensuring the most effective expenditure of the funds. But this subject has always been approached with the greatest reluctance out of deference to the principles of local control. The following approaches have been discussed in relation to OMB-commissioned evaluations and the GAO evaluation.

Limiting percentage of costs that could be financed from Section 5.

Using a cost index to limit increases in eligible expenses.

Establishing a bonus fund for improvements in productivity.

Earlier discussions included the idea of requiring management analyses using performance factors in the allocation formula.

Develop policy guidelines encouraging local areas to recover more costs from the farebox and to develop economical local fare policies.

Adopt stricter vehicle replacement rules (e.g., replace buses only after 15 years of service, instead of 12 years) in order to promote improved maintenance.

Require performance audits and/or certification of performance as is presently done by a few State governments.

C. The most effective and non-intrusive signal for the imposition of necessary controls to improve the management and efficiency of transit operation is the complete return of operating responsibility to local communities. As long as Federal funds continue to support the operation of transit system then the Federal government would also be drawn into the establishment of controls and regulations. In fact the 1981 GAO Report: *Soaring Deficits Must Be Controlled*, recommended that UMTA be more involved in monitoring system operations and development of fare and subsidy policies. As stated before, this type of Federal intrusion is contrary to the policies of this administration.

D. As stated elsewhere, no operating assistance formula adequately responds to the diverse localized issues affecting the efficiency and effectiveness of the systems across the country.

While the 1974 formula could be improved upon, possibly along the lines suggested by our proposed capital program, the problem of the proper quantity of service and the proper relation of competing interests—labor, management, taxpayers, and users—cannot be regulated except by local authorities relying on local resources.

Senator RIEGLE. Your proposal would base the level of Federal assistance on the amount of revenue—both farebox and tax revenue—raised by a locality.

A. What incentive would a locality have to reduce its costs under this proposal?

B. Since you propose to end operating assistance, wouldn't your revenue-based formula doubly penalize a distressed community that could not afford to replace lost Federal operating revenues?

C. Since your proposal would limit use of Federal funds to capital expenditures, what relationship is there between a community's actual capital needs and the amount they would get from the formula?

D. Under your formula grant proposal there is little Federal control over how the funds are used. What protection would the Federal taxpayer have against a community using its formula funds for frivolous, wasteful, or unnecessary activities?

E. How do you respond to the GAO report of April 20, indicating that due to insufficient UMTA monitoring, one transit authority wasted about \$8 million in Federal funds?

RESPONSE. A. To fully understand the concept behind the Administration's capital allocation formula the entire legislative proposal must be reviewed as a single package. The incentive to operating the most cost efficient system will be driven by the fact that local communities will be totally responsible for the cost of operating their own system. There will be no Federal subsidies. Consequently, cost efficiency—in terms of service levels, operating costs, etc.—will be made based on local economic, political and social needs.

Having made a local decision on the extent of revenue or local outlays available to public transit, the Federal Government will use this factor to distribute available capital funding. It's our belief that the local fiscal constraints will provide the incentive to reduce operating costs. We do not believe that capital formula will encourage unnecessary operating costs, merely so that more capital funds can be received.

B. Our revenue-based formula is determined on the basis of an area's share of the total non-Federal transit operating revenue nationwide. Because Federal operating assistance is not included in the evaluation of the revenue-based formula, the phase-out of Federal operating assistance would not directly affect the amount of funds an area would get under the formula, assuming all local revenues stayed at a constant level. It is true, however, that an area that increased local revenue to cover phased-out Federal operating assistance would receive more Federal funds under the formula than would an area that did not make up the difference in phased-out federal operating assistance. It should be pointed out, however, that the formula is designed to allocate capital funds on the basis of service being provided and the strength of local commitments. Our formula would direct Federal funds to transit-intensive areas showing a strong local commitment to mass transportation. We believe this would assure that Federal funds are used in an efficient and cost-effective manner.

C. The revenue-based formula is an efficient measurement of capital needs because it reflects the level of transit intensity in an area. Local operating revenue is a measure of ridership and local community commitment to transit, and we believe Federal capital funds should primarily be directed to those areas of high ridership and significant commitment to transit.

D. One of the principal purposes behind our legislative proposal is to increase local flexibility and decision-making in transit matters and to reduce intrusive Federal requirements and paperwork submissions. How transit capital funds should be spent is a local decision that should be made by local officials. Under our proposal, however, recipients still would have to comply with our planning requirements and would be required to hold local public hearings and public consultations before Federal funds would be made available. We believe this will assure rational and efficient decision-making at the local level. Moreover, recipients annually must provide independently-conducted reviews and audits on their compliance with those requirements that have been self-certified. Our review of this process will enable us to determine whether recipients have complied with all of the required provisions. If we determine that they have not complied, our legislative proposal specifically provides that Federal funds may then be withheld or withdrawn.

E. The Department responded to the GAO Draft Report on this matter involving the Massachusetts Bay Transportation Authority, and our reply is contained in the Final GAO Report. (A copy of our reply is attached). The Department disagreed with many of the conclusions drawn by the GAO in its Draft Report. As mentioned earlier, our proposed legislation would require that recipients of capital formula

funds satisfy existing planning requirements and hold public hearings and consultations on the use of such funds before the funds would be made available. This process would assure that local projects reflect the capital needs of an area.

U.S. DEPARTMENT OF TRANSPORTATION,
Washington, D.C., January 25, 1982.

Mr. HENRY ESCHWEGE,
Director, Community and Economic Development Division, U.S. General Accounting
Office, Washington, D.C.

DEAR MR. ESCHWEGE: I have enclosed two copies of the Departmental response to the General Accounting Office (GAO) draft, "Better Administration of Capital Grants Could Reduce Unnecessary Expenditures," dated December 10, 1982.

We disagree with the GAO findings and recommendations which indicate that the Boston Regional Office (Region I) is failing to properly monitor the operations of the Massachusetts Bay Transportation Authority (MBTA) and is thereby permitting the misuse of millions in grant funds. Evidence provided by the Regional Office in response indicates that auditors placed too great an emphasis upon the Quarterly Progress Reports for their source of information and failed to consider other sources that were available to the Regional Office to monitor the MBTA's activities. Also, the draft report appears in one or two instances to have failed to mention agreements and funding commitments in effect at the time.

If we can be of further assistance, please let us know.

Sincerely,

ROBERT L. FAIRMAN.

DEPARTMENT OF TRANSPORTATION REPLY TO GAO DRAFT REPORT ON BETTER ADMINISTRATION OF CAPITAL GRANTS COULD REDUCE UNNECESSARY EXPENDITURES (345557)

SUMMARY OF GENERAL ACCOUNTING OFFICE (GAO) FINDINGS AND RECOMMENDATIONS

The GAO reviewed the Department of Transportation's (DOT's) monitoring of grants made to the Massachusetts Bay Transportation Authority (MBTA) for local construction, rail modernization, and purchase of rolling stock. These grants are made and administered by DOT's Urban Mass Transportation Administration (UMTA). GAO has criticized UMTA for inadequate monitoring of capital grants which prevented UMTA from taking corrective action to prevent the MBTA from the unnecessary expenditure of millions of dollars due to:

- A. the construction of a track that is not being used;
- B. costly delays in acquiring automatic train control equipment; and,
- C. the purchase and installation of power equipment which will not be used.

The report also criticizes the MBTA for not acquiring expected third-party funding for highway elements of Project No. MA-23-9007.

The GAO has recommended that the Secretary of Transportation direct the Administrator of UMTA to: (1) require that the MBTA prepare a project monitoring plan which will include UMTA's requirements for monitoring as part of the grant application, and submit the plan to UMTA for certification and use by UMTA for periodic evaluation of the MBTA's performance; (2) redistribute the grant workload, in the interim, by having the UMTA Regional Office grant managers concentrate on major grants and monitor minor grants on a sample basis; and (3) establish guidelines for projects involving external funding for UMTA-supported projects, to ensure that sufficient funds will be available to complete projects.

SUMMARY OF DOT'S POSITION

1. After reviewing this draft report, DOT is concerned that the GAO has presented a distorted picture of grant administration in UMTA Region I by failing to consider the performance record of the Office on the 69 MBTA projects that have been carried out. Most have been accomplished according to the approved scope of work and without significant problems. We would like to go on record that the transit service in the Boston area has been significantly aided by UMTA assistance.

2. Although the GAO report indicates a problem with the installation of automatic train control equipment on the Haymarket North Extension, it fails to mention the alternative controls employed and the overall success of this multi-million dollar extension. Since the line's opening in 1976, it has operated without problems and is carrying thousands of daily riders into and out of Boston.

3. The report mentions that additional staffing is needed in Region I's Project Management Division. Staff has been redeployed in the Regional Office in order to aid the Project Management Division in carrying out its many duties. GAO failed to mention this action.

4. Finally, the GAO report indicates a misunderstanding of the relative importance of Quarterly Progress Reports and the dynamics of State and local decision-making in the completion of project activities.

POSITION STATEMENT

UMTA monitoring

We agree with the GAO that an increase in staff would permit the Regional Office to do an even better job of monitoring capital grant programs. However, due to a reduced staff, prudent management dictates that the following review and approval actions must take precedence over field inspections: (1) 25 percent and 75 percent construction plans and specifications; (2) Third party contracts; (3) Change Orders; (4) Force Account Work; (5) Cost Allocation Plans; (6) Appraisals for Property Takings; (7) Meetings with Grantee Officials; and, (8) Telephone Guidance for Grantees.

The GAO implies that UMTA was unaware of items A., B., and C. (listed on the first page) because these issues were not noted in the Quarterly Progress Reports. These items have long been known to the Regional Office staff because there are numerous other sources of information (e.g., meetings and telephone conversations with the MBTA, project visits, media information, and technical assistance requests by the MBTA) to draw upon to monitor projects.

With regard to the quality of Quarterly Progress Reports, all grantees were notified of the required elements by the Regional Office's letter of April 27, 1981. Further, as the need arises, individual grantees are advised if Quarterly Progress Report deficiencies occur.

Third track

A third track was constructed as part of the extension of the MBTA's Orange Line rapid transit service from the Community College Station to Oak Grove, the temporary terminus, a distance of 4.75 miles. The function of the third track is to provide express service for the future extension to Route 128.

Although the southerly 2.25 miles of the third track are used only occasionally for testing or emergencies, they were constructed at the most cost-effective moment, during the Haymarket North Extension, and at a time when it was fully expected that the line would be extended to Route 128. To construct it later would have incurred the following additional costs: (1) Double digit inflation; (2) The contractor's restricted access to the work site; (3) The protection devices for the adjacent active revenue track only a few feet away; (4) Flagmen labor rates; and, (5) Premium time for construction activities during non-revenue service hours.

We consider the construction of the third track a prudent management decision by the MBTA at the time, and is consistent with its historical pattern of development. The third track was placed in the ultimate configuration of the extension to Oak Grove. At present, the track is suffering minimal deterioration, since rail wear, tie stress, and ballast fouling result from the traffic which moves along the route.

We concur with the GAO that studies should continue to identify uses to which the third track can be used in the near term and have encouraged the MBTA to this end.

Automatic train control (ATC)

The track component of an automatic train control system was installed as part of the Haymarket North Extension of the Orange Line in 1975.

Since the old No. 11 Cars were not equipped with ATC (carborne cab signals), a temporary wayside signal system, employing all of the ATC track components except the speed command function, was superimposed on the ATC track work. This system has been in daily use since opening day and, according to MBTA sources, has saved millions of dollars in labor costs.

No. 11 Cars were still required to provide the scheduled service until late in 1981, so that the temporary wayside signal system had to be built and installed, regardless of the availability of ATC on the new No. 12 Cars.

The MBTA experienced an eight-year debugging effort on the prototype ATC system on the South Shore section of the Red Line. These problems resulted in the MBTA incurring thousands of dollars of additional operating costs to have an adequate backup system in place. Because of this experience, we believe that the MBTA

is acting prudently in proceeding cautiously in its plans to install the ATC on the new No. 12 Cars.

The MBTA did attempt to include the car borne cab signals as a change order to the No. 12 Car procurement, but could not reach agreement on the cost with the manufacturer. Instead, the MBTA has engaged a design engineer to develop a specification for the complete ATC signal system, including car borne cab signals for the No. 12 Cars and the track component for the entire Orange Line. This strategy places total system responsibility on one contractor. The specifications will be advertised for bids this Spring. All work will be completed to coincide with the construction schedule of the Southwest Corridor Project now underway. Although the new ATC system will now cost more, it is expected to be a superior system. All of these events have been well known to the Regional Office and any absence of their description in Quarterly Progress Reports should not be taken to indicate a loss of data.

Powerplant

We concur with GAO that the costs of any unused equipment provided under the Immediate Needs—Power grant should be recovered. Although we have agreed to await the sale of the Mitsui Boilers before entering into negotiations on a payback, we shall inform the MBTA that negotiations must begin by July 1, 1982, in the event the unused equipment has not been sold by then.

The complex issues of repairing obsolete elements of a dilapidated power plant to prolong its useful life for just a few years were, and have been, well known to the Regional Office staff. The absence of pertinent discussion in the Quarterly Progress Reports in no way diminished our knowledge of the project.

UMTA's decision not to concur in the award of a contract to connect the boilers to a second lowest bidder was based on a \$1.0 million increase above the \$1.2 million bid by the lowest bidder. We also wanted to protect the opportunity for the lowest bidder, a minority business enterprise, to obtain a contract. Department of Transportation regulations require that strong efforts be made to insure that minority business enterprises have an opportunity to participate in our grant programs.

Other funding sources

GAO cites UMTA for failing to get commitments from other sources of funding, specifically, FHWA-Massachusetts Department of Public Works' (DPM's) funds for seven bridges and arterial street construction within the project limits. Contrary to the GAO Report, these bridges and the arterial street have never been considered essential to the construction and operation of the Mass Transit Project, and their deletion will have little effect on the usefulness of the completed transit project. At the time of grant approval, UMTA had in place all of the funding commitments necessary to complete its mass transit project.

Three other items should be pointed out in regard to the bridges and street construction.

1. The former Dukakis Administration of the State had made clear commitments to use FHWA-Massachusetts DPW funds for the subject work at the time that UMTA approved the Orange Line project. Subsequently, a new Administration with new funding priorities took office. UMTA has no control over the election of local officials and the policies that they institute.

2. The present apparent shortfall in funding of the bridges and street work has not impacted the Orange Line rapid transit construction. Local and State officials are continuing to meet on the problem, and it is expected that though a series of cost reductions and deferrals most of the bridge and street work will be done.

3. The third party funding commitment that was needed for the Orange Line Rapid Transit Project (a \$62,000,000 commitment from the Federal Railroad Administration was in place prior to UMTA's approval of the Orange Line Project). The Interagency Agreement between UMTA, the MBTA, and FRA that set FRA's participation at \$62,000,000 was signed on August 2, 1978. The GAO report makes no mention of this agreement or funding commitment.

Recommendations

Our comments on GAO's five general recommendations are presented in the order in which the recommendations appear on Page 20.

1. UMTA has already conditionally certified larger, experienced grantees, waiving UMTA's older requirements that certain actions receive prior UMTA review and approval. Also, this Region I has waived additional prior review and approval requirements for the MBTA where their internal procedures provide sufficient safeguards. We shall continue these efforts wherever feasible.

2. Our experience has shown that smaller grantees, while not encountering sophisticated problems, do require our engineering assistance and, in particular, our project administration guidance. They often are not fully able to comply with the requirements of OMB Circular A-102 and the External Operating Manual without our administrative assistance. We cannot simply abandon working with many of the small communities of this Region, such as Burlington, Portland, or Bangor as the GAO report seems to suggest.

3. We have encouraged the MBTA to study additional uses of the third track and they have expressed their willingness to cooperate. However, recovery of any of the costs associated with the construction of the third track is not warranted as described above.

4. The MBTA's present plan to advertise a contract for a complete ATC system for the entire Orange Line places system responsibility on a single contractor. This is a superior plan to the 1978 proposal to contract the work separately, and, although more costly, will result in a better system.

5. The recovery of funds for the unused boiler equipment will be deferred pending the sale of the boilers or by July 1, 1982, if the equipment has not been sold by that date.

In closing, we must again emphasize UMTA's strong disagreement with the conclusions drawn by the GAO in the subject draft report. We will be giving further consideration to this draft report and providing more detailed comment in response to it as soon as additional data may be obtained from the MBTA.

Senator RIEGLE. Your proposal allows for self-certification by the recipient with respect to compliance with a number of Federal statutory requirements.

What monitoring does UMTA intend to undertake with respect to actual compliance?

If no ongoing monitoring is being carried out, are you in compliance with your statutory responsibilities as Secretary of Transportation to enforce such statutes?

RESPONSE. With respect to monitoring, our legislative proposal provides that each recipient shall, at least on an annual basis, make available to the Department independently-conducted reviews and audits to determine whether the recipient has carried out its self-certifications consistent with applicable laws. These independently-conducted reviews and audits will enable the Department to monitor recipient compliance with the self-certification process. Moreover, in the event specific complaints about a recipient's compliance with self-certification are made, we will investigate these on a case-by-case basis.

Because of this compliance process—our review of the recipient's annual reviews and audits and our case-by-case review of complaints—we believe that we will be able to monitor recipient compliance with the self-certification process consistent with the Secretary's statutory responsibilities.

Senator RIEGLE. The bill submitted to this Committee proposes a Federal share of 75 percent for formula capital projects. It is my understanding that the Department had proposed a 90 percent Federal share—in effect, a partial compensation for the loss of operating assistance, but that was overruled by OMB.

Why did the Department believe a 90 percent share was appropriate, and how is the structure of your proposal affected by moving to a 75 percent Federal share?

RESPONSE. During the development of our legislative proposal we considered a number of different Federal share levels for the capital formula program. Ultimately, the proposal we forwarded to the Congress set the Federal share level at 75 percent. We believe this level is consistent with and furthers the basic thrust of our revenue-based formula that targets funds to those areas that show a strong local commitment to transit. Similarly, a higher local share requires a higher local commitment to Federal funding. Moreover, assuming constant Federal dollars, a higher local share means that more total dollars will be available for transit purposes.

Senator RIEGLE. Under your proposal, 90 percent of all capital funding would come out of the formula program. If a community has a letter of intent for a major project, would they be required to fund that project out of their formula apportionment?

RESPONSE. We intend to honor existing letters of intent primarily under the Section 9 capital formula program.

Senator RIEGLE. When Section 18 (the rural and small urban program) was created in 1978, the record had been rife with testimony that capital assistance alone was insufficient to develop a comprehensive approach to rural transit; that without Federal operating assistance, new buses and vans would rust away for lack of

money for drivers and fuel. You now propose to limit the rural program to capital assistance.

What evidence do you have that this program can survive without any Federal operating assistance available?

RESPONSE. Transportation in the rural and small urban areas existed prior to implementation of the Section 18 program. The services provided by the various organizations are much broader than those funded under UMTA's program. Also, many other Federal agencies provide larger amounts of Federal assistance—both capital and operating—than that provided by UMTA. Consequently, UMTA's participation represents a marginal component of the national rural transportation activities.

For the period fiscal year 1979 through fiscal year 1981, \$301 million has been appropriated for UMTA's Section 18 program. Total cumulative obligations from fiscal year 1979 through the first five months of fiscal year 1982 are \$179 million, a little less than 60 percent of funds available. Of the funds obligated, approximately half has been used for operating assistance. We believe that by efficient use of all remaining Federal program resources, efficient transit systems will continue to be operated in rural and small communities.

Senator RIEGLE. The Administration bill would exempt a locality from Federal procurement requirements if the locality elects to use "benchmark" pricing and certifies that it has an "open and competitive bidding process."

A. Can you explain why this approach is necessary?

B. Please describe how you would arrive at a "benchmark" price.

C. Would Buy America requirements still apply?

RESPONSE. A. Section 8 of the DOT bill adds a new Section 12(b)(3) to the UMT Act authorizing the Secretary of Transportation to establish a "benchmark price" which would set the maximum amount of Federal participation in the acquisition of buses by UMTA grantees. The establishment of this price would provide grantees with an alternative means of procuring buses with Federal funds. This provision does not mandate that any transit authority utilize the benchmark pricing method in procuring buses—it simply establishes a new system that is available at the election of the grantee.

If a transit authority elects to use benchmark pricing, it must still certify to the Secretary that it has a competitive procurement system. Once this election and certification occur, then the transit authority can buy buses with Federal funds without being bound by Federal procurement requirements such as OMB Circular A-102 and life-cycle costing. (This does not mean that a grantee would be precluded from using life-cycle costing; but only that life-cycle costing would not be a federally imposed requirement.)

B. The setting of a benchmark price by the Secretary does not mean that DOT will be designing a "benchmark bus", with federally designated components, and then administratively determining the price of that bus. We see the benchmark price as being simply a reflection of bus market prices during the immediately preceding time period. For example, if the Secretary decides to specify the benchmark price for a particular type of bus at the beginning of the fiscal year, it would be based on the average sales price in a preceding period. The Federal contribution would then be set at 75 percent of that average price. If there has been a time lag due to slow sales movement of particular types of buses, it might be necessary to apply some type of indexed inflator or deflator to the average sales price. Finally, since there are several types of buses in operation today (i.e., advanced design buses, new looks, articulated buses, etc.), the Secretary would probably establish a benchmark price for each particular type of bus.

Thus, the only factor that we envision being involved in setting the benchmark price is the average sales price for a particular type of bus during a particular period. That factor would be determined by the market.

C. With regard to buy America provisions, Secretary Lewis recently testified before the Senate Banking Committee that Buy America would apply to the benchmark price proposal.

Senator RIEGLE. Under your proposal, Section 13(c) labor protections would not apply to the new Section 9 formula grant program.

A. If a transit operator decides to adjust his service, or to start a new service in order to avoid using unionized employees on an existing service, would the operator be able to use its Federal funds to accomplish this goal?

B. Would you please explain why the administration decided to drop Section 13(c) protections from what, by 1985 under your proposal, would be 90 percent of Federal transit assistance?

C. Does the Secretary of Labor concur in this decision?

D. Does the Secretary of Labor agree that jurisdiction for Section 13(c) under the discretionary program should be transferred to the Secretary of Transportation?

E. If such a transfer of jurisdiction takes place, what impact would it have?

F. What different rules or standards would you apply, as Secretary of Transportation?

G. Can you explain what steps have been taken at the administrative level to streamline and improve administration of the Section 13(c) requirement?

H. Why are possible administrative reforms so insufficient as to require a statutory change?

RESPONSE. A. No employees of recipient organizations represented by unions are covered by collective bargaining agreements in addition to Section 13(c) agreements. The collective bargaining agreements cover wages, hours, work rules and general terms of employment while the Section 13(c) agreements are primarily designed to protect employees against the possible adverse effects of a federally-assisted project. The right of employees to organize and be represented by unions is governed by state and national labor relations laws.

In addition, most recipients of capital formula grants will not be receiving Federal financial assistance for transit for the first time, and therefore, existing Section 13(c) agreements and the resulting protections will continue for the life of agreement. Most agreements do not have a fixed termination date but provide protection against adverse effects resulting from specific grants of Federal assistance, including the preservation of collective bargaining rights. Further, it is expected that in addition to block grants, most recipients will also participate in grants to be let under the discretionary grant provisions of Section 3 of the Urban Mass Transportation Act. Section 13(c) labor protective requirements will continue to be applicable to these grants.

B. The capital formula program is a new locally administered program which is intended to reduce or eliminate as many Federal requirements as possible. In 1964, Section 13(c) was intended to preserve collective bargaining rights of private sector workers transitioning into the public sector through federally assisted buy-outs. These acquisitions are largely accomplished and arrangements are in place to preserve collective bargaining and the rights and privileges thereunder for employees affected. Therefore, the historical concerns which Congress intended to address by creating Section 13(c) have been largely met.

C. & D. The Administration's Federal mass transportation legislation, consistent with Office of Management and Budget procedure, was circulated to all departments for their comment. The Department of Labor concurred in the proposal as set forth by the Department of Transportation.

E. Our proposal to transfer responsibility for administering Section 13(c) from the Department of Labor to the Department of Transportation is based upon a belief that it is difficult to effectively administer a program when that program is subject to divided responsibility. For example, UMTA has made a significant effort to improve its grant delivery system; yet in undertaking this effort we had no direct control over one aspect of the grant-making process, the development of Section 13(c) labor protections. The consolidation of all functions associated with a program under one agency affords an opportunity for more effective management of the program but also a more balanced and coordinated approach in achieving all objectives associated with that program.

F. & G. Since discussions have not been concluded with the Department of Labor, we cannot discuss specific changes intended to improve the administration of Section 13(c). However, generally, the DOT/DOL discussions are aimed at (1) sorting out collective bargaining issues from Section 13(c) issues; (2) improving the timeliness of Section 13(c) negotiations; (3) establishing parameters for Section 13(c) negotiations; and (4) generally, clarifying the protective responsibility for Federal grantees in this area. The Department of Transportation intends to adhere to many of the guidelines for the administration of Section 13(c) now being developed with the Department of Labor.

H. Administrative reforms under discussion are intended to address many long-standing concerns raised by certain practices developed over time in the application of Section 13(c) to Federal mass transit grants. Legislative proposals, however, are aimed at the totality of effective program management, not reform of past problems. The legislative proposal accordingly consolidates responsibility for program management under one Department. It also does not apply 13(c) requirements to the new capital formula grant program which is intended to reduce Federal intrusiveness where possible. Finally, the legislative proposal clarifies the status of private

paratransit employees under section 13(c), a matter which was not anticipated by the original legislation.

ANSWERS TO QUESTIONS SUBMITTED BY SENATOR DODD

Senator DODD. What is your Department's position on the use of vanpooling programs to augment existing mass transit systems where new service is needed or to supplement unproductive routes with more cost-effective methods of moving people? For example, in Connecticut we have a very successful non-profit regional ridesharing program called Metropool which is a unique partnership between the public and private sectors. With private corporations contributing part of its operating funds, Metropool has already removed over one million vehicle miles traveled for an annual savings of almost 900,000 gallons of gasoline and eliminated 234 tons of pollutants from the region's air in its first year of operation. With an average daily round trip of 85 miles, Metropool's vans complement rather than compete with mass transit by serving those suburban areas that are not adequately served by buses and trains. They also work to provide shuttle service from rail and bus stations to worksite locations away from the downtown areas. Metropool has also been working in cooperation with Connecticut's largest city transit operator to provide expanded service to suburban areas where large buses would be physically inefficient and not cost effective.

Do you see such efforts as Metropool becoming eligible for UMTA funding?

RESPONSE. The UMTA program recognizes ridesharing and vanpooling activities as legitimate and worthwhile components of local mass transportation programs which are eligible for UMTA support. The Urban Mass Transportation Administration to worksite locations away from the downtown areas. Metropool has also been made part of the record to further delineate UMTA policy on ridesharing activities.

DEPARTMENT OF TRANSPORTATION, URBAN MASS TRANSPORTATION ADMINISTRATION, Washington, D.C., February 28, 1980.

Subject: Use of Section 5 funds for ridesharing.

1. *Purpose.*—The purpose of this Circular is to provide guidance on the use of Section 5 funds which, in conjunction with FHWA FAUS funds and UMTA Section 6 funds, support projects in the National Ridesharing Demonstration Program.

2. *References.*—

a. Section 5 of the Urban Mass Transportation Act of 1964, as amended.

b. Title 23, USC, Interstate Transfer funds; Federal-aid Urban Systems funds.

3. *Background.*—The National Ridesharing Demonstration Program was announced by the Department in the Federal Register on March 14, 1979. The guidance contained in this Circular for the use of Section 5 funds is not limited to demonstration applications but applies to any proposed application for Section 5 funds for ridesharing activities. Designated recipients are eligible applicants for Section 5 funds. Other public and private entities may participate in ridesharing activities through contractual arrangements with designated recipients. Capital costs are funded at 80 percent Federal share; operating deficits up to 50 percent Federal share.

4. *Policy.*—Section 5 funds may be used to support ridesharing activities. The Regional Offices are responsible for the development, approval, and administration of those projects utilizing Section 5 funds, coordinating with the Office of Grants Assistance and the Office of Service and Methods Demonstrations as appropriate.

5. *Requirements.*—The Section 5 portion of a ridesharing demonstration project must be submitted as a regular Section 5 application and all Section 5 application and all Section 5 legal and application requirements apply. A separate Section 13(c) agreement for the ridesharing element of a project need not be obtained if the ridesharing element is part of a larger Section 5 application. In this case, an agreement for the entire project can be negotiated. If Section 5 assistance is requested for a ridesharing project which is not part of a larger Section 5 application, a separate Section 13(c) agreement must be negotiated. Implementation of some ridesharing projects may require an extension of current Section 13(c) coverage.

All proposed ridesharing project applications are subject to the availability and local approval of the utilization of Section 5 funds for the proposed project and all projects must be included in a current, locally and Federally approved TIP/AE. Depending upon various local considerations, judgment and discretion in the appropriate utilization of funding sources may be required.

The following information will assist in determining eligible activities and funding sources.

6. *Activities eligible for Section 5 assistance.*—The current distinction between those items eligible for either Section 5 capital or operating assistance applies to ridesharing projects. Some activities, such as staff salaries for system design, coordination and marketing or ridesharing activities are eligible for Section 8 planning assistance funds as well. Although the items listed in paragraph 7 are eligible for FAUS or Section 5 assistance, we encourage applicants to maximize their use of highway funds for these purposes especially items b and c.

If the driver of a carpool or vanpool service is salaried, or is required to operate the carpool or vanpool as condition of employment, the service may not receive UMTA funds as a ridesharing project. This restriction applies to all carpool and vanpool activities described below associated with such salaried driver programs.

Use of project funds as loan guarantees to private leaders in order to leverage a greater amount of money with which to purchase additional vehicles is permissible; however, we have not as yet determined the policies or procedures for the administration of such a program. Guidance on this subject is being developed and will be issued in the near future.

7. *Eligible capital costs.*—

a. Purchase and startup costs for computer hardware for systems to locate and inform participants of potential carpools, or vanpools.

b. Preliminary engineering, signs and minor physical modifications to designate carpool or bus lanes; traffic control devices to advise motorists and control the movement of carpools or buses.

c. Signing and modification of publicly or privately owned facilities to provide preferential parking for carpools.

d. Purchase of vehicles for a vanpool program. The vans may then be leased to employers or individuals. Normally the acquisition cost and operating expenses of vanpool programs are recovered from user fees. If the only mass transportation service operated by the applicant is a ridesharing service, any revenues from such a service, proposed or actual, must be retained and used in the vanpool program. If this occurs, these revenues must be applied against the total project cost to derive a net project cost. However, if the ridesharing project is part of a larger mass transportation service operated by the applicant, the revenues may be retained and applied against the total expenses of the entire mass transportation system to which the ridesharing service is a complement.

8. *Eligible operating costs.*—The following activities are eligible for Section 5 operating assistance if associated with the direct implementation of ridesharing projects. Feasibility and planning studies are eligible for Section 8 assistance.

a. Staffing, leasing, operating, and software costs associated with carpool or vanpool computer systems.

b. Staff salaries and administrative costs directly related to data collection, and analysis prior to designation of carpool or bus lanes.

c. Public information and promotional expenditures, including personnel and direct administrative costs to market ridesharing programs and ridesharing incentives to employers and the general public, costs of encouraging the use of high occupancy vehicle facilities, and coordination and promotion of variable work hour programs to facilitate ridesharing.

d. Staff salaries and administrative costs of establishing and operating vanpool programs and fringe and corridor parking facilities to encourage carpools, vanpools, or public transportation.

PETER BENJAMIN,
Acting Associate Administrator for Transit Assistance.